(17,477.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 109.

AUGUST STREITWOLF, PLAINTIFF IN ERROR,

vs.

ELIZABETH STREITWOLF.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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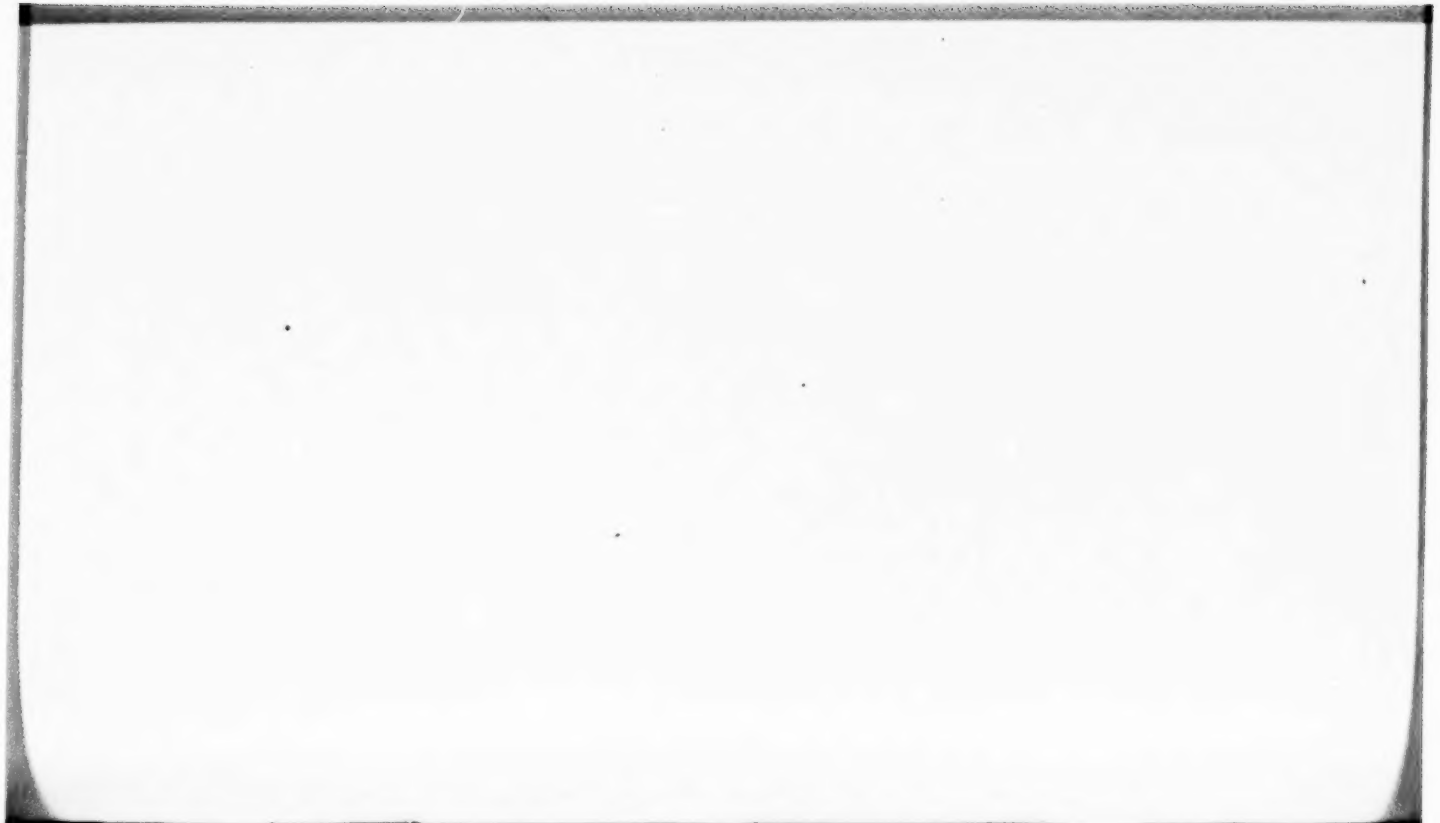

a New Jersey Court of Errors and Appeals.

Between—

ELIZABETH STREITWOLF, Compl'nt and Respondent,
and
AUGUST STREITWOLF, Defendant and Appellant. } On Appeal.

Willard P. Voorhees, of counsel with appellant.
Alan H. & Theo. Strong, of counsel with respondent.

b In Chancery of New Jersey.

To the Honorable Alexander T. McGill, chancellor of the State of New Jersey:

Humbly complaining, showeth unto your honor your oratrix, Elizabeth Streitwolf, of the city of New Brunswick, in the county of Middlesex and State of New Jersey, that on the third day of June, in the year eighteen hundred and seventy-seven, your oratrix, whose maiden name was Elizabeth Landmesser, was married to August Streitwolf, her present husband, at the said city of New Brunswick, by the Reverend Charles Bank, pastor of St. John's Reformed church of said city, and that subsequent to said marriage your oratrix and her said husband lived together in the said city of New Brunswick down to the fourth day of August instant (1896), when your oratrix left her said husband in consequence of his abuse and ill treatment, as hereinafter stated.

That the said August Streitwolf has always been moody and fitful in his conduct toward your oratrix and seemed to delight in finding fault with everything she did, flying into a rage without the smallest provocation, and in latter years treating your oratrix with the utmost harshness and brutality, both in words and in blows.

That for several years past it has been a common occurrence for her said husband to strike your oratrix in the face with his fist and kick her, at the same time applying to her the vilest epithets.

That your oratrix, through shame, for a long time (and always as much as possible) concealed even from her father's family the ill treatment which she constantly experienced at the hands of her husband, but that it gradually affected her health, so that in the month of December last (1895) she had become nervously
c broken down and almost prostrated, and your oratrix's father, brothers, and sisters concurred in the suggestion of her said husband that she should go for a time to some sanitarium or like institution where she might find needed rest and recuperation, and at their recommendation and accompanied by her said husband and August Landmesser, your oratrix's brother, your oratrix, on or about the *the* thirtieth day of December, in the year eighteen hundred and ninety-five, went to the Westport sanitarium, at Westport, in the State of Connecticut, to remain temporarily, and in the course of a few days thereafter received a letter from her husband informing her that she could not return to him; that the doors of his house

were barred against her, but that he would pay weekly the sum of ten dollars on her order and send her her clothing, jewelry, &c.

That soon after receiving said letter your oratrix left said sanitarium and went to stay with her relatives, with whom she remained until the twenty-first day of March last, when, at the request of her husband, she again returned to live with him, having been, in the meantime, much benefited by the rest and cessation of his ill treatment which she had enjoyed.

That her husband, upon her said return, at once resumed his former treatment of her, and she found it as impossible as ever to obtain his approval, notwithstanding that she earnestly and laboriously sought in every way to please him and do everything possible for his comfort, and avoided with the utmost care whatever might irritate or displease him.

And your oratrix shows that it is impossible for her to enumerate all or most of the occasions on which he has struck her, but that the following are some of them—that is to say: On or about the tenth day of December, in the year eighteen hundred and ninety-three, he blackened her eyes with blows with his fist, so that for weeks she stayed in her rooms in order that the condition of her face might not be seen.

d In the summer of eighteen hundred and ninety-four, on the occasion of his having fallen off the float at the boat-house in the Raritan river near said city, he struck her in the eyes with his fist because she could not wait upon him as quickly as he desired, from which blows her eyes were again blackened.

On or about February fourth, in the year eighteen hundred and ninety-five, he again struck her with his fist in the face, blackening her eyes.

That on Sunday, December fifteenth last (1895), he returned home about one o'clock in the morning under the influence of liquor and struck and beat her severely.

That on or about March twenty-eighth last (a week after her return from the absence above mentioned) he again abused and struck your oratrix repeatedly.

That on or about the twelfth day of June last your oratrix was awakened after midnight by hearing her husband going into the water-closet or toilet-room, and she also got up, thinking that he might need some attention, as he had been drinking and was apparently ill, and that he then repeatedly struck her, and, as she kept her hands and arms over her face, as she has learned to do in order to avoid marks of his violence which she could not hide, he beat and kicked her in the back, from which she was so bruised and sore in the region of the kidneys that she suffered severely for several days after and could not even sleep at night for the pain thus caused her.

That your oratrix on this occasion finally awakened her son and went in his room and locked the door to escape the violence of her husband. The next day when your oratrix complained of her suffering from being thus beaten her husband said he had only given her what she deserved.

e That on or about the fifth day of July last the said August Streitwolf chased your oratrix about the house with a coil of rope, with which he tried to strike her, until he was prevented by his son August, and then he picked up a heavy stone pitcher and threatened to strike his son with it.

That on or about the twentieth day of July last he caught your oratrix by the arm and wrenched it violently.

That on the third day of August instant he threatened to dash out your oratrix's brains and to throw her out of the window.

That on the fourth day of August instant, at about seven o'clock in the evening, your oratrix had been out to purchase a mackerel at a neighboring grocery, and as she passed through her husband's store on her return her husband charged her in the presence of Eugene Viereck and her son, August Streitwolf, Junior, with having told one William F. Schlosser, lately employed by said Streitwolf, something to the disadvantage of said Viereck, and your oratrix, not having in fact done so, denied it; whereupon said Streitwolf, your oratrix's husband, struck her violently in the face with his straw hat, and after some further words struck her again in the face with a folded newspaper and afterward again struck her in the face with his said straw hat; that he then attempted to strike her with his fist, and even picked up a chair to strike her with it, and was only prevented from doing so by said Viereck and your oratrix's son, who held said Streitwolf; that while he was so restrained by them he called your oratrix a bitch, and your oratrix for once, stung beyond endurance at being thus humiliated in the presence of a stranger, struck him in the face with a small pocketbook which she had in her hand, and then passed on upstairs.

That your oratrix, having determined to no longer live with her husband a life so wretchedly unhappy, in a few moments *f* went out through the store to go to her father's house (her husband and her son and said Viereck being still in the store), when her said husband called after her that she need not return, as the house would be barred against her.

That since leaving her husband's house under the circumstances and at the time above stated your oratrix has remained at the house of her father in New Brunswick, and her son and only child, August Streitwolf, Junior, now of the age of seventeen years, is also with her, having left his father's house on the seventh day of August instant, by his father's command, because he took sides with your oratrix as against her said husband, and on the said seventh day of August instant the said August Streitwolf, having collected a large quantity of your oratrix's clothing, much of which was new and fine and worth in all three or four hundred dollars, cut and tore the same in pieces, so as to render it utterly useless and of no value, and in that condition delivered said clothing when your oratrix sent f*i*r it as she did on the following day in response to a message from her husband to come and get her things.

And your oratrix further shows that she is without means for the support of herself and son, and that neither she nor her son has any trade, business, o*r* occupation in which they can labor for their sup-

port, and that they are dependent upon your oratrix's relatives, except that said Streitwolf has on two occasions since your oratrix left him on the fourth day of August aforesaid sent her ten dollars, which he apparently intends for her weekly allowance.

And your oratrix shows that her said husband is engaged in a large and profitable wholesale and retail liquor business, and that he is worth about seventy-five thousand dollars in real and personal property which he has accumulated in said business, and has a net annual income of from ten to fifteen thousand dollars.

g And your oratrix shows that on account of the extreme cruelty, brutality, and abuse of her said husband toward her, as above set forth, her life with him had become intolerably wretched, and she was in constant and imminent danger of receiving from him some bodily injury which might end her life or render her a cripple, and that not only the direct but the indirect effect of her husband's violence and continual ill treatment have already permanently impaired her health.

In tender consideration whereof and forasmuch as your oratrix has not a complete or adequate remedy at law and can only have relief in this honorable court where matters of this nature are properly cognizable; to the end, therefore, that the said August Streitwolf, defendant herein, may without oath full, true, direct, and perfect answer make to all and singular the premises as fully as if the same were here again repeated and he thereunto particularly interrogated, and that this honorable court may decree that your oratrix be divorced from the bed and board of her said husband forever, and that the said defendant may be decreed pending this suit and permanently to pay such weekly sum to your oratrix by way of alimony and for the support of your oratrix and her said son as from the circumstances of the parties and the nature of the case shall be reasonable and just, and also to pay reasonable counsel fees to your oratrix's counsel for the prosecution of this suit, and that the said defendant may be required to give reasonable security for such alimony and maintenance, and that your oratrix may have such other or further relief in the premises as the nature of the case may require and shall be agreeable to equity and good conscience, may it please your honor, the premises considered, to grant unto your oratrix the State's writ of subpœna issuing out of this honorable court

h and under the seal thereof, to be directed to the said August Streitwolf, defendant, therein and thereby commanding him on a certain day and under a certain penalty therein to be inserted to be and appear before your honor in this honorable court, then and there to answer all and singular the premises and to stand to and abide by and perform such order and decree therein as to your honor shall seem meet and shall be agreeable to equity and good conscience.

And your oratrix will ever pray, &c.

ALAN H. & THEODORE STRONG,
Solicitors & of Counsel with Complainant.

A true copy.
L. A. THOMPSON, *Clerk.*

i [Endorsed:] In chancery of N. J. Between Elizabeth Streitwolf, compl't, and August Streitwolf, def't. Original bill. Alan H. & Theo. Strong, sol'rs. Filed Aug. 17, 1896.

j In Chancery of New Jersey.

Between—

ELIZABETH STREITWOLF, Complainant, and AUGUST STREITWOLF, Defendant. } On Bill for Divorce. Answer.

The answer of the defendant, August Streitwolf, to the bill of Elizabeth Streitwolf, the complainant, filed in the above-stated cause.

This defendant, answering the said bill, admits the marriage between himself and the said complainant as in said bill stated, and that they lived together in the city of New Brunswick down to the third day of August, eighteen hundred and ninety-six, when said complainant left this defendant; but this defendant denies that such desertion on her part was in consequence of his abuse and ill treatment, as is alleged in said bill.

This defendant denies that he has been moody and fitful in his conduct towards said complainant, or that he delighted in finding fault with her or without provocation became enangered, or that he has ever treated her with harshness or brutality, either in words or acts. This defendant further denies that it has been a common occurrence, as in said bill alleged, for him to strike said complainant in the face with his fist and kick her and at the same time applying to her vile epithets. On the contrary, this defendant says that he has always treated her in as kind a manner as was possible under the circumstances of the case, and has always been kind to *k* her, and also taken the utmost regard for her welfare and happiness, and has borne with her through the whole period of their married life, and he denies all the alleged acts of cruelty in said bill set forth.

This defendant, further answering, says that the complainant several years ago became addicted to the use of intoxicating liquors and has drunk them to excess, notwithstanding all the endeavors of this defendant to prevent the same and urgent requests that she should cease from such habits; that complainant is of an insanely jealous disposition, and when she has partaken of liquors in the slightest degree she becomes very morose, tantalizing, and abusive to this defendant; that he has borne with her during the whole of her married life, but that sometimes, owing to her tantalizing and her constant talking and upbraiding, he has lost his temper and has answered her in strong language, and has on two or three occasions a long time ago struck her; that she used intoxicating liquors to such an extent that she became distressed, and in eighteen hundred and ninety-four the doctor in attendance advised that she should be taken away to some institution where she might be kept from the habit

and receive proper treatment; that this defendant then for the first time knew that the illness for which he had employed the doctor arose from her habits of intemperance.

This defendant at once went to Charles Landmesser, the father of said complainant, and told him what the doctor had said; said Landmesser thereupon accused this defendant of wishing to get rid of his wife, and flew into a rage and would not listen to the placing of this defendant's wife in such an institution. In order not to make a break in the family, this defendant deferred taking any action looking toward sending his wife away, but continued to try to restrain her and to bring about a better state of affairs.

l This defendant, further answering, says that his said wife after that remained at home with him, but in the summer of eighteen hundred and ninety-five she became ill again owing to her continued habits of intemperance, and a long and serious sickness ensued, lasting until December of eighteen hundred and ninety-five, owing to the effects of her intemperate habits; that then he was again advised by the physician in attendance to place her in an institution, which was accordingly done with the consent of her father and brother, and the said wife went to Westport, Conn., and was placed there in an institution; that she remained there but a few days when this defendant received a letter from her saying that it was a "lunatic asylum" and she would not stay. She went away from that institution without permission and went to her sister's in Jersey City, and there remained until the latter part of March or the first of April, eighteen hundred and ninety-six.

During the month of February this defendant was ill at his home in New Brunswick, and has learned through a mutual friend that this complainant was anxious and willing to come back to him at New Brunswick, and through their intervention he went to Jersey City to see her after he had somewhat recovered. He found that she was not in a fit state to return, and feared her coming back because of her temptation to drink. But after having visited her several times and she being so importunate in her entreaties to return he at last agreed that she should come back to him on probation, and that she must promise to cease from taking intoxicating liquors, and to control her temper and tongue and live pleasantly and agreeably with him and look after the household affairs and not run up bills for cloth-s as she had been doing. She then agreed to all this.

m This defendant, answering, says that his said wife left him on the third day of August, eighteen hundred and ninety-six, and not on the fourth day of August, and that on the said third day of August, about seven o'clock in the evening, she was passing through the store with a mackerel and overheard a certain conversation which this defendant has with one Eugene Viereck, and became enangered and had some heated words with this defendant, whereupon she struck this defendant in the face with the said mackerel, and this defendant turned and lightly struck her with his light straw hat and also with a newspaper which he had in his hand, and thereupon his said wife struck him twice under the eye with her pocketbook, which has steel or metal bindings, so violently

that this defendant's eye was cut and bled profusely; that thereupon his said wife went upstairs and afterwards, in a few minutes, returned and went out of the house; that this defendant sent his son to tell her that she need not return. She replied from the other side of the public street that "she did not want to return, that she had had her satisfaction," and called this defendant a "Dutch brute."

This defendant denies that he seized a chair for the purpose of striking her or made any attempt or effort to strike her, other than he has herein related.

This defendant denies that he told his son, August Streitwolf, Jr., that he must leave the house.

And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLARD P. VOORHEES,
Solicitor & of Counsel with Defendant.

A true copy.
L. A. THOMPSON, *Clerk.*

n [Endorsed:] In chancery of New Jersey. Between Elizabeth Streitwolf, complainant, and August Streitwolf, defendant. Answer. Willard P. Voorhees, sol'r. Filed Aug. 19th, 1897.

1 New Jersey Court of Errors and Appeals.

Between—

ELIZABETH STREITWOLF, Compl'nt and Respondent,
and
AUGUST STREITWOLF, Defendant and Appellant. } On Appeal.

Willard P. Voorhees, of counsel with appellant; Alan H. & Theo. Strong, of counsel with respondent.

The original bill for divorce *a mensa et thoro* was filed August 17, 1896.

A petition for alimony *pendente lite* was filed August 18, 1896.

Answer was filed to original bill August 19, 1897, and replication thereto was filed September 3, 1897.

2 *Petition for Injunction*

(Filed September 7, 1897.)

To the Honorable Alexander T. McGill, chancellor of the State of New Jersey:

The petition of Elizabeth Streitwolf, the complainant in the above-entitled cause respectfully shows, that on or about the seventeenth day of August, in the year eighteen hundred and ninety-six, your petitioner filed her bill of complaint in said cause against August Streitwolf, her husband, praying to be divorced by this honorable court from the bed and board of her said husband forever on account of his extreme cruelty to your petitioner, and that he, the said

defendant, might be decreed pending said suit, and permanently, to pay weekly alimony for the support of your petitioner and August Streitwolf, Junior, her son and only child, and also her costs and counsel fees.

That process of subpœna to answer said bill, returnable the twenty-ninth day of August, A. D. 1896, was duly served upon the said defendant, and upon a petition filed in said cause by your petitioner for alimony and counsel fee, and after an answer to said petition and hearing on which the said defendant was represented by counsel, an order was made in said cause on or about the second day of November, in said year, for the payment of alimony, counsel fee and costs by said defendant, in pursuance of which he has since paid to your petitioner the weekly sum of twelve dollars and fifty cents by way of alimony.

That the said defendant also filed a petition in said cause on or about the — day of September, in said year, praying that an order might be made by this court awarding the custody of his son, the said August Streitwolf, Junior, to the said defendant during the pendency of this suit, upon which last petition such proceedings were had that an order was made bearing date the second
3 day of November aforesaid, directing that the said August Streitwolf, Junior, be placed at school at the Peddie Institute, at Hightstown, in this State, at the expense of said defendant, but not to be visited there by either of his parents except on being summoned by the principal of said institute, in case of sudden illness, unless upon the order of this court, and all further direction upon said application was reserved. That an answer was filed in said cause by said defendant on or about the nineteenth day of August last (1897), to which a replication has been filed, and said cause is still pending at issue, not having been brought to hearing for want of opportunity since filing of said answer—all of which matters will better appear by the pleadings, proceedings and orders on file in this cause, to which your petitioner prays that reference may be had with the same effect as though the same were herein fully set forth.

That at the time of the commencement of said suit and ever since your petitioner's marriage to the said August Streitwolf (which took place on the third day of June, in the year eighteen hundred and seventy-seven, at the city of New Brunswick, in this State), your petitioner and her said husband resided and were domiciled in the city of New Brunswick, in this State, where your petitioner's said husband had acquired considerable real estate and personal property in the liquor business, which during the greater part of his married life and until the month of November, A. D. 1896, he had there carried on. That since the commencement of said suit your petitioner and her said son, August Streitwolf, Junior, have continued to reside and still reside at this time in the State of New Jersey, and that they have at no time had any other domicile or place of abode; and in particular that neither your petitioner nor her said son has ever been present within the State of North Dakota, or in anywise subject to the laws of said State.

4 Nevertheless your petitioner shows that her said husband has lately instituted an action against her in the district court of the sixth judicial district of the State of North Dakota, and in the county of Morton, praying that the bonds of matrimony between him and your petitioner be dissolved and that the custody of their said child be awarded to him and for general relief; and that the paper hereto annexed purporting to be a copy of the summons and complaint in said action were served upon your petitioner on the seventeenth day of August last (1897), in the city of Jersey City, in this State.

And your petitioner further shows that it is not true that the said August Streitwolf was (as alleged in the second paragraph of said complaint), at the time of the commencement of that action and for more than ninety days preceding the same a resident in good faith of the said State of North Dakota; but that on the contrary his pretended residence in said State at any time was wholly fictitious and fraudulent and intended only to give a colorable jurisdiction to said court for the purpose of said action; that in fact the said August Streitwolf has never changed the domicile which during all the years of his married life with your petitioner, he maintained in the city of New Brunswick, in this State—although much of the time since the filing of the bill of complaint in this cause by your petitioner has been spent by him in traveling for pleasure. That in the early part of the present year the said August Streitwolf was absent in Europe, for a period of about two months, and after his return, during parts of the months of April and May, he boarded in the city of New York. That in the month of May he left the city of New York giving out that he was going to the Yellowstone park for a pleasure trip, and from that place he corresponded with his son in the latter part of June. That he was back again in the city of New York about the middle of July, and was in New Brunswick in this State, on the seven-

5 teenth day of that month and thereafter remained in the neighborhood of New York and New Brunswick for some weeks, during which time he represented that he had just returned from a pleasure trip through the West, including a tour of the Great Lakes, and that upon his return to New York he had found awaiting him a notification of the death of his aunt, a wealthy woman in Germany, who by her will had bequeathed to him the principal part of her large estate; and that he was about sailing for Germany to claim said legacy. That although said August Streitwolf during all of the period since his return from Europe kept up communication with his son personally and by letter he never intimated to him that he had changed or intended to change his residence or that he had been or meant to go to North Dakota to live temporarily or permanently, until on the fourteenth day of August last, the said August Streitwolf, Junior, received from his said father a letter and also a newspaper, both of which were dated and mailed at Mandan in said State of North Dakota.

And your petitioner shows that the allegations of misconduct on her part contained in the said complaint, a copy whereof served upon

her in this State as aforesaid, is hereto annexed, are and each of them is wholly and absolutely false except only as to her striking her said husband in the face with her pocketbook, which she did on the occasion of her finally leaving the house of her said husband in New Brunswick aforesaid on the fourth day of August, A. D. 1896, after he had repeatedly struck her in the face and had called her a bitch—all of which is more particularly stated in the bill of complaint and petition for alimony and accompanying affidavits in this cause.

That all of the matters alleged insaid complaint are within the jurisdiction of this honorable court to take cognizance of and are properly matters of defense either by way of answer or cross-bill in this cause, although the defendant has not set up the said
6 charges of adultery in this cause well knowing the same to be false, and therefore incapable of proof if your petitioner shall have a due opportunity of meeting said charges, but doubtless hoping that by his bringing the same to a hearing in North Dakota, she will be placed at such disadvantage as to be practically deprived of such opportunity.

That an adjudication and decree thereon against your petitioner in said action so brought against her in the district court of the sixth judicial district of the State of North Dakota will, if said court shall be held to have jurisdiction, be a bar to this suit by your petitioner; so that the practical effect of said proceeding if the same shall be carried through will be (as the object thereof no doubt is) to withdraw the adjudication and settlement of the marital rights of your petitioner from this court and transfer the same to the court of North Dakota to the great inconvenience and oppression of your petitioner.

And your petitioner respectfully submits that this court having by the filing of the bill of complaint and service of process in this cause acquired jurisdiction of the controversy between your petitioner and her said husband respecting their rights and obligations arising from the marriage relation between them and their conduct toward each other in respect to said relation before the courts of the State of North Dakota acquired any right to entertain such a controversy (if such right has ever yet been obtained by said foreign courts) and all of the witnesses on both sides being residents of this State, and all the matters to be investigated having occurred, if at all, within this State where the marriage took place and the entire married life of said parties has been passed, this court should retain the right to adjudicate and determine the same with full effect and without embarrassment from a possible decree in said court of North Dakota.

And your petitioner shows that she has not in anywise ap-
7 peared in said action so brought against her nor can she safely do so lest she shall thereby confer jurisdiction upon said court, which she insists has no jurisdiction or right to adjudicate in respect to the matters alleged against her in said complaint; neither can your petitioner safely permit a judgment by default to be entered against her in said action.

Your petitioner therefore prays that a writ of injunction may issue

out of this honorable court, to be directed to the said August Streitwolf, his solicitors, attorneys, and agents, therein and thereby commanding them and each of them that they absolutely desist and refrain from further prosecuting the said action against your petitioner by the said August Streitwolf in the said district court of the sixth judicial district of the State of North Dakota or any other action in respect to the matters set forth in the said complaint so as aforesaid served upon your petitioners, and that your petitioners may have such further or other relief as to the court shall seem meet and may be agreeable to equity and good conscience.

And your petitioner will ever pray, &c.

ALAN H. & THEODORE STRONG,
Solicitors and of Counsel with Petitioner.

Here follows copy of summons and complaint from district court of North Dakota, a copy of which is set out in the judgment-roll herein printed at page —.

STATE OF NEW JERSEY, }
Middlesex County, } *ss.:*

Elizabeth Streitwolf, being by me duly sworn according to law, on her oath saith that she is the complainant in the above-entitled
8 cause and the petitioner in the above petition: that the matters and things in her said petition set forth so far as they relate to her own acts are true, and so far as they relate to the acts of others she believes them to be true. That the paper above annexed, purporting to be a copy of a summons and complaint in an action brought in the district court of the sixth judicial district of the State of North Dakota and in the county of Morton, by August Streitwolf, husband of your petitioner, against her for divorce and for the custody of her son, August Streitwolf, Junior, was served on deponent on the seventeenth day of August last (1897) in the city of Jersey City, in this State, and that she has not appeared or answered in said action so brought against her. That deponent has never been in the State of North Dakota and has never resided elsewhere than in the State of New Jersey at any time since her marriage to the said August Streitwolf on June third, in the year eighteen hundred and seventy-seven; that she left her husband's home in the city of New Brunswick on the fourth day of August, in the year eighteen hundred and ninety-six, and since then has been staying part of the time in the family of her father in said city of New Brunswick, and the remainder of her time in the family of her married sister in Jersey City, in this State, and that her son August, except when at the Peddie Institute at Hightstown, in this State, has made his home with deponent, though keeping up an occasional communication with his father by interviews in the city of New York and by correspondence.

And deponent saith that each and every of the allegations of misconduct on her part contained in said complaint in said action in North Dakota are absolutely and entirely false except only as to her striking her husband in the face on the occasion of her finally leav-

ing him, as to which deponent admits that she did strike him in the face with her pocket-book under the provocation stated in her
9 petition for alimony and affidavits heretofore filed in this cause; and that it is not true that she ever told her said husband that she was pregnant with child by any other man.

ELIZABETH STREITWOLF.

Sworn and subscribed before me September 6, 1897.

JAMES H. VAN CLEEF,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, }
Middlesex County, } ss:

August Streitwolf, Junior, being by me duly sworn according to law, on his oath saith that he is the son of August Streitwolf and Elizabeth Streitwolf, his wife, the parties in the above-entitled cause, and that since the separation of his mother from his father, deponent has lived with his mother (except when at school at Peddie Institute), and that he now lives with his mother in Jersey City, in this State; that deponent has nevertheless been in more or less frequent communication with his father, both by personal interviews and by correspondence, since the return of his said father from Europe in the month of March last, and also before his said father went to Europe; that said August Streitwolf (deponent's father) upon his said return from Europe took rooms at number 114 West Twenty-second street, in the city of New York, at which place deponent quite frequently visited him; that said father had also occupied the same rooms for several weeks before he left for Europe, which was on or about the fifth day of January last; that on the seventh day of May last deponent went to said rooms and on inquiry for his father was informed that he had left the day previous with all his baggage for Chicago, as he had given out. Upon further inquiring deponent was informed from another source that his father had
10 stated that he was going to the Yellowstone park with a party of men for pleasure.

That the next that deponent heard from his father was a letter written by him to deponent dated and postmarked the nineteenth day of June at the Mammoth Hot Springs, in Wyoming. Said letter, being written on the letter-head paper of the Mammoth Hot Springs hotel, bearing the name "Yellowstone national park," and Yellowstone Park Association, opened with this sentence: "As you see by the heading of these lines I am enjoying a lengthy trip through the park," &c., and stated that he had sent that day to deponent "by mail" a descriptive book of the park, &c., which book deponent in fact received by mail at the same time with said letter, on or about the twenty-third day of June aforesaid; that deponent answered said letter on the twenty-fifth day of June, addressing the same to his father at the said hotel, and his father afterward told deponent that he had received said letter. That deponent had no further communication with his father until the twenty-first day of July when a special delivery letter was received by deponent from him

dated and mailed in New York city on the twentieth day of said month: that deponent soon afterward saw his father in New York, where he remained until about the first of August; that during his stay in New York in the latter part of July he informed deponent that he had received information from Germany that his aunt Frau Lauenroth had lately died there and willed to him quite a large amount of property, real and personal, and that he was about to start for Germany to claim it. That deponent fully believed from the statements so made to him by his father that his said father had in fact gone to Germany, until deponent received on or about the fourteenth day of August a letter written from him written upon letter-head paper *on* the Inter Ocean hotel, at Mandan, North
11 Dakota, dated the eleventh day of August, which was the first intimation that deponent ever had that his father had at any time been in North Dakota.

AUGUST STREITWOLF, JR.

Sworn and subscribed before me September 4, 1897.

WOODBRIDGE STRONG,
Master in Chancery of New Jersey.

Writ of Injunction.

NEW JERSEY, *To wit:*

[L. S.] The State of New Jersey to August Streitwolf, his solicitors, attorneys, and agents, and each and every of them, Greeting:

Whereas it hath been represented to us in our court of chancery on the part of Elizabeth Streitwolf, complainant, by her petition that she lately exhibited her bill of complaint against you the said August Streitwolf, defendant, to be relieved touching the matters set forth in the said bill and in her said petition,

We, therefore, in consideration of the premises and of the particular matters set forth in the said bill, do strictly enjoin and command you, the said August Streitwolf and all and every the persons before mentioned, and each and every of you under the penalty that may fall thereon, that you and every of you, do absolutely desist and refrain from further prosecuting the certain action for divorce and other relief lately brought by said August Streitwolf against said Elizabeth Streitwolf his wife, in the district court of the sixth judicial district of the State of North Dakota, and in the county of Morton, or any other action in respect to the matters set forth in the complaint in said action heretofore served upon the said petitioner as in said petition is set forth, until you, the said defendant shall
12 have fully answered the said bill of complaint and our said court shall make other *other* order to the contrary.

Witness, his honor Alexander T. McGill, our chancellor, at Trenton, the eighth day of September, in the year of our Lord one thousand eight hundred an*y* ninety-seven.

ALAN H. & THEODORE STRONG,
Solicitors.

L. A. THOMPSON, *Clerk.*

A true copy of said writ compared by me.

ALAN H. STRONG.

Supplemental Bill.

(Filed January 11, 1898.)

To the Honorable Alexander T. McGill, chancellor of the State of New Jersey:

Humbly complaining showeth unto your honor your oratrix Elizabeth Streitwolf of the city of Jersey City, in the county of Hudson in said State, that on or about the seventeenth day of August, in the year eighteen hundred and ninety-six, your oratrix filed her original bill of complaint in this cause against August Streitwolf, her husband, defendant herein, setting forth among other things that she was married to her said husband on the third day of June, in the year eighteen hundred and seventy-seven, at New Brunswick, in the county of Middlesex, in this State, and that from the time of said marriage your oratrix and her said husband lived together in said city of New Brunswick down to the fourth day of August, eighteen hundred and ninety-six, when she left her said husband in consequence of his personal violence and ill treatment, the particulars of which were in said original bill related and set forth
13 and by reason of which as in said original bill alleged, the life of your oratrix with her said husband had become unbearable and her health had become permanently impaired.

And it was therefore in and by said original bill prayed that your oratrix might be divorced from the bed and board of her said husband forever on the ground of his extreme cruelty to her as aforesaid and that he might be decreed pending this suit and permanently to pay such weekly sum to your oratrix by way of alimony and for the support of herself and August Streitwolf, Junior, her only child then of the age of seventeen years living with your oratrix, as might be reasonable and just, and also that the said defendant might be required to pay your oratrix's counsel fees and give reasonable security for payment of said alimony, and that your oratrix might have such other or further relief in the premises as the nature of the case might require and should be agreeable to equity.

That upon the filing of said bill process of subpœna to answer the same was issued out of this court and duly served upon said defendant in the said city of New Brunswick, where he then and for some months subsequently carried on an extensive wholesale and retail liquor business; and your oratrix soon afterward filed her petition in this cause praying that defendant might be required to pay her alimony pending said suit and also her counsel fee and costs of prosecution, the same which petition was also served upon said defendant with due notice of application for the relief therein prayed, upon the hearing of which the said defendant was represented by counsel and voluminous affidavits were presented upon both sides and an order was made bearing date the second day of November in said year requiring the said defendant to pay to your oratrix alimony at the rate of twelve dollars and fifty cents per week during the continuance of

this suit (and also a counsel fee and costs upon said petition)
14 which alimony your oratrix has received weekly to the present time from Willard P. Voorhees, Esquire, the solicitor and counsel for the said August Streitwolf in this suit.

And your oratrix further shows that pending the hearing upon said petition for alimony, &c., the said defendant also presented his petition in this cause, signed by himself and accompanied by an affidavit verifying the same sworn to by him on the thirtieth day of September, A. D. 1896, in which petition he described himself as being of the city of New Brunswick, New Jersey, and prayed that an order might be made by the chancellor awarding to said defendant the custody of his son, the said August Streitwolf, Junior, during the pendency of this suit. And that your oratrix shows that a hearing upon said last petition was held at the same time as the hearing upon said petition for alimony, and that an order was made thereon also bearing date the second day of November, A. D. 1896, that the said August Streitwolf, Junior, be placed at school at the Peddie Institute, at Hightstown, in this State, at the expense of the defendant, not to be visited while there by either of his parents (except in case of illness, &c.) and further direction upon said application for the custody of said infant was reserved; since which time no further order has been made in respect thereto.

And by way of supplement your oratrix further shows that after the proceedings above recited certain negotiations were entered upon between your oratrix and her said husband through their respective solicitors looking to a termination of this suit in consideration of provision to be made by said defendant for the separate maintenance of your oratrix, in consequence of which negotiations (which however came to nothing) no further steps were taken in this cause until on the nineteenth day of August, in the year eighteen hun-
15 dred and ninety-seven, an answer by said defendant was filed long after the time for answering had expired and without any order permitting the same to be filed.

And your oratrix further shows that on the seventeenth day of August (and two days prior to the filing of said answer) there was served upon your oratrix in the city of Jersey City, in this State, a paper purporting to be a copy of a summons and complaint in an action brought against her by her said husband in the district court of the sixth judicial district of the State of North Dakota, in the county of Morton, praying that the bonds of matrimony between him and your oratrix might be dissolved, and that the custody of their said child be awarded to him, and for general relief.

That by the terms of said summons (which was dated at Mandan, North Dakota, the ninth day of August, A. D. 1897), your oratrix was required to answer the complaint in said action and to serve a copy of her answer upon the attorneys for the plaintiff within thirty days after the service of said summons upon her exclusive of the day of service; and in case of her failure to appear or answer she was thereby notified that judgment would be taken against her by default, for the relief demanded in said complaint.

That in the said complaint it was alleged that your oratrix and

her said husband intermarried on or about the third day of June, A. D. 1877, at New Brunswick, in this State, and at the time of filing said complaint continued to be husband and wife; that the said August Streitwolf at the time of filing said complaint was and for more than ninety days immediately preceding the commencement of said action had been a resident in good faith of the State of North Dakota; that since said marriage and particularly since the year eighteen hundred and ninety your oratrix had treated her said husband in a cruel and inhuman manner,
16 and particularly as follows: That your oratrix had developed a violent and ungovernable temper and abused and vilified her said husband by calling him vile and indecent names, and was constantly in the habit of speaking of her said husband in such terms in the presence of friends and acquaintances, and even of strangers; that such language and conduct of your oratrix has caused her said husband to endure great and grievous mental suffering, humiliating him, and had so preyed upon his mind that it became necessary in November, 1896, for him to close out his business; that since and during that time your oratrix has treated him in a cruel and inhuman manner by inflicting upon him personal injuries; that your oratrix was constantly in the habit of abusing him, creating scenes and disturbances, and would work herself into fits of frenzy and strike and beat him, and that in particular on third day of August, 1896, at the city of New Brunswick aforesaid, your oratrix struck her husband in the face with a mackerel, and hit him blackening his eye with the iron rims of a pocket-book, cutting and lacerating his face; that your oratrix's entire course of conduct towards her husband since 1890 had been cruel and inhuman, she being constantly in the habit of using violent and abusive language towards him, causing him to endure great and grievous mental suffering, which has so impaired his health that it had become unsafe to live with her, and that during said time she was constantly in the habit of inflicting upon the plaintiff personal injury, causing him to endure great suffering.

And for a second and further cause of action against your oratrix her said husband in his said complaint further alleged upon pretended information and belief that your oratrix had committed adultery in or about the year eighteen hundred and eighty, with one John S. Clark, in the State of New Jersey, the plaintiff alleging himself to be unable to state more definitely as to the time and place of the said alleged offence; that in the month of November, 1894, your
17 oratrix stated that she was pregnant with child by some person other than her said husband; and upon pretended information and belief it was in said complaint further alleged that in the month of August, 1896, at the residence of her husband, in New Brunswick aforesaid, your oratrix committed adultery with one William F. Schlosser; and the said plaintiff further upon pretended information and belief in said complaint alleged that your oratrix on divers days and times between said last-mentioned date and the commencement of said suit, had committed adultery with various persons and at various times and places unknown to said

plaintiff; that each of said acts of alleged adultery were committed without the consent, connivance and previous knowledge of said plaintiff, and that he had not cohabited with your oratrix since he became cognizant of the commission of the same.

And for a third further cause of action against your oratrix her said husband in said complaint further alleged that your oratrix, disregarding her duties as a wife towards her said husband, had been guilty of habitual intemperance for more than three years immediately preceding the third day of August, 1896; that during all of said years she was addicted to the drinking of intoxicating liquors to excess, which said excessive drinking of intoxicating liquors had disqualified her a great portion of the time from properly attending to her duties as a wife, and which had inflicted great mental anguish upon the said plaintiff.

And it was further in said complaint stated that there was one minor child living as the issue of said marriage, named August, eighteen years of age. Wherefore the said plaintiff in his said complaint prayed that the bonds of matrimony between him and your oratrix be dissolved, and that the custody of said minor child be awarded to said plaintiff; and that he might have such other and further relief as might be just and equitable in the premises.

And your oratrix shows that there was annexed to said
18 complaint an affidavit by her said husband stating that he was the plaintiff in said action, that he had heard read the said complaint and knew the contents thereof, and that the same was true except as to those matters stated on information and belief, and as to those he believed it to be true.

And your oratrix shows that it is not true that her said husband was (as alleged in his said complaint) at the time of the commencement of said action and for more than ninety days preceding the same a resident in good faith of said State of North Dakota, but that on the contrary his pretended residence in that State at any time was wholly fictitious and fraudulent and designed only to give colorable jurisdiction to said court for the purpose of said action, nor was he in fact within said State of North Dakota any considerable portion of that time. That he continued to carry on his liquor business in the city of New Brunswick (where he still owns several parcels of valuable real estate) until November in the year eighteen hundred and ninety-six, when he took rooms in the city of New York, which he occupied until early in the following January he went to Europe; and upon his return to this country after an absence of two or three months, he again occupied the same rooms continuously until the sixth day of May (1897) when he left, giving out that he was going to Chicago or (as he stated to others) to the Yellowstone park. That he in fact did go to the Yellowstone park and from that place wrote to his son a letter dated and postmarked the nineteenth day of June, upon letter-head paper of the Monmouth Hot Springs hotel (Yellowstone national park) in which he stated that he was "enjoying a lengthy trip through the park."

That about the middle of July said August Streitwolf was again in New York city and remained there or in the neighborhood of

that city until the early part of August, during which time
19 he informed his son that he was about to start for Germany in order to obtain a legacy of a very large amount, which as he represented, had lately been left him by an aunt.

That during all of the time that he now claims to have been residing in North Dakota the said August Streitwolf kept up communication by letter and by interviews with his son, and never intimated to him that he had changed or intended to change his residence, or that he had been or intended to go to North Dakota to reside, either permanently or temporarily; and upon his return to New York in July he represented to his acquaintances generally that he had been enjoying a pleasure trip through the West, including the Great Lakes.

And your oratrix shows that on or about the seventh day of September, following the service upon her in this State of the said summons and complaint as above mentioned, she presented her petition to the chancellor in this cause, setting forth the proceedings to that time had in this cause as hereinabove stated, and the service upon your oratrix at Jersey City of the said summons and complaint in said action brought against her by her said husband in the State of North Dakota, and denying that her said husband was a resident of said State of North Dakota as claimed in his said complaint, and setting forth the facts regarding his residence substantially as the same are hereinabove set forth, and further stating as the fact is, that your oratrix and her son, the said August Streitwolf, Junior, had always continued to reside in this State, and that they had at no time had any other domicile or place of abode, and in particular that neither of them had ever been present within the State of North Dakota or in anywise subject to the laws of that State, nor has your oratrix in any way appeared in said action; and denying as your oratrix here again denies all of the allegations of misconduct on her
part, contained in said complaint, except only as to striking
20 her husband in the face with her pocketbook, which she did on the occasion of her finally leaving him, after he had on that occasion repeatedly struck her in the face and called her a bitch. And your oratrix in her said petition insisted that all of the matters alleged in said complaint were within the jurisdiction of this court to take cognizance of and were properly matters of defence either by way of answer or cross-bill in this cause, although the said defendant had not set up the said charges of adultery in this cause, well knowing the same to be false and therefore incapable of proof if your oratrix should have a due opportunity of meeting said charges; but doubtless hoping that by his bringing the same to a hearing in North Dakota your oratrix would be placed at such a disadvantage as to be practically deprived of such opportunity.

And your oratrix further in her said petition urged that an adjudication and decree thereon against her in said action in North Dakota would if said court should be held to have jurisdiction, be a bar to this suit by your oratrix so that the practicable effect of said proceeding if carried through would be (as the object thereof no doubt was) to withdraw the adjudication and settlement of the marital

rights of your oratrix from this court and transfer the same to the court of North Dakota to her great inconvenience and oppression, and that this court having by the filing of the bill of complaint and service of process in this cause acquired jurisdiction of the controversy between your oratrix and her said husband respecting their rights and obligations arising from the marital relation between them and their conduct toward each other in respect to said relation, before the courts of the State of North Dakota acquired any right to entertain such a controversy (if such had been obtained by said foreign courts) and all of the witnesses on both sides being residents of this State and all the matters to be investigated having oc-
21 curred, if at all, within this State where the marriage took place and the entire married life of the parties *have* been passed, this court should retain the right to adjudicate and determine the same with full effect and without embarrassment from a possible decree in said court of North Dakota; that your orator could not safely appear in said action lest she should thereby confer jurisdiction upon said court, which she in her said petition insisted and here again insists had no jurisdiction or right to adjudicate in respect to the matters alleged against her in said complaint nor could your oratrix safely permit a judgment by default to be entered against her in said action.

And your oratrix therefore in consideration of the matters aforesaid, prayed in and by her said petition that a writ of injunction might issue out of this court to be directed to the said August Streitwolf, his solicitors, attorneys and agents, therein and thereby commanding them and each of them that they absolutely desist and refrain from further prosecuting the said action against your oratrix by the said August Streitwolf in the said district court of the sixth judicial district of the State of North Dakota or any other actions in respect to the matters set forth or other relief as to the court shall seem meet and might be agreeable to equity and good conscience.

And your oratrix shows that the said petition was accompanied by affidavits verifying all the facts therein stated and hereinabove set forth, and upon the presentation and filing of said petition and affidavits an order was made in this cause by his honor, the chancellor, bearing date the seventeenth day of September, in said year (1897), that a writ of injunction should issue agreeably to the prayer of said petition, and thereupon a writ of injunction did issue accordingly out of this court, signed by the clerk and under the seal thereof, on the eighth day of said month directed to the said August Streitwolf, his solicitors, attorneys and agents, and each and every
22 of them commanding and enjoining them the said August Streitwolf and all and every the persons before mentioned and each and every one of them under the penalty that might fall thereon, that they and every of them should absolutely desist and refrain from further prosecuting the certain action for divorce and other relief then lately brought by said August Streitwolf against your oratrix, his wife, in the district court of the sixth judicial district of the State of North Dakota and in the county of Morton or any other action in respect to the matters set forth in the complaint in

said action theretofore served upon your oratrix as in said petition set forth until this court should make other order to the contrary thereof.

And your oratrix shows that the said writ of injunction having been duly issued as aforesaid, was on or about the eleventh day of said month of September placed in the hands of the sheriff of Morton county, in the State of North Dakota, for service upon the said August Streitwolf, who was then at Mandan in said county and State, but that before the said sheriff was able to find the said Streitwolf, he, the said defendant, was in some manner informed that the said sheriff had such a writ for service on him and at once (on the same day) left the State of North Dakota and secreted himself and remained in hiding in order to avoid strict service of said writ, and did not again return to Mandan until after the entry of the decree or judgment in said action as hereinafter stated.

That E. C. Rice, Esquire, an attorney-at-law of said State of North Dakota, residing at Mandan, was employed on behalf of your oratrix to assist in serving said writ and was unable to ascertain at the time where said defendant was hiding, but learned that mail matter addressed to him at Mandan aforesaid was forwarded to him; whereupon the said E. C. Rice, Esquire, did on the twenty-fifth day of September in said year, place in the post-office at Mandan, North Dakota, an envelope directed to said August Streitwolf at the
23 place, having the postage thereon prepaid and containing a true copy of the said writ of injunction with an affidavit endorsed thereon and sworn to by said E. C. Rice that the same was a true copy of the original writ, which said envelope with its said enclosure was forwarded to and received by the said Streitwolf prior to the first day of October.

And your oratrix further shows that the names of Hoggatt and Caruthers and H. G. Voss were subscribed to and endorsed on the copy of the summons and complaint so as aforesaid served on your oratrix, as attorneys for the said plaintiff, the said Voss being located at Mandan, and the said Hoggatt and Caruthers having an office at number 220 Broadway in the city of New York, which said addresses were also endorsed on the said complaint; and that on or about the thirteenth day of September, the said Voss was fully informed by said E. C. Rice, Esquire, of the said writ and that it was an injunction issued by this court restraining the said Streitwolf and his attorneys, from further proceeding in the said action brought by him against your oratrix as aforesaid, and said Voss discussed with said Rice the effect and validity of said writ at considerable length.

And your oratrix shows that on the thirteenth day of September aforesaid, a copy of the said writ certified by the clerk of this court to be a true copy thereof was served upon the said Hoggatt and Caruthers at their office, number 220 Broadway in the city of New York, by leaving the same with one J. F. O'Donnell, who was then in charge of said office and at first represented that he was a member of said firm, but upon receiving such certified copy denied that he was a member of said firm, at the same time stating that both

Mr. Hoggatt and Mr. Caruthers were then absent from the city of New York.

And your oratrix further shows that on the fifteenth day of
24 September aforesaid, a copy of said writ certified under the seal of this court to be a true copy thereof was exhibited to Willard P. Voorhees, Esquire, solicitor for said defendant in this cause, by one of the solicitors of your oratrix and that the said solicitor of the defendant read the same attentively, and within a few days another copy thereof was delivered to said solicitor of the defendant in this cause by one of the solicitors of your oratrix.

And your oratrix further shows that the writ of injunction was thereafter duly returned and filed in the office of the clerk of this court with affidavits annexed thereto, setting forth the service thereof as aforesaid, to which said writ and affidavits your oratrix prays that reference may be had as also to the aforesaid petition for said writ and affidavits accompanying the same and to the said original bill, answer, petition for alimony, petition for the custody of said August Streitwolf, Junior, and affidavits and other proceedings whatsoever, in this cause.

And your oratrix shows that not only each of the said attorneys of the said August Streitwolf, in the said suit so brought by him in North Dakota as aforesaid, and his said solicitor and counsel in this cause, but also the said August Streitwolf himself prior to the seventh day of October last, was fully and accurately informed of the issuing of said writ of injunction and of the contents thereof; but that nevertheless a judgment or decree was entered in said action in the said district court of the sixth judicial district of the State of North Dakota in and for the county of Morton, on the said seventh day of October, A. D. 1897, before the Honorable W. H. Winchester, judge of said court, on motion of said Hoggatt and Caruthers and Voss, attorneys for said August Streitwolf, plaintiff, whereby it was ordered, adjudged and decreed by said court that the marriage theretofore existing between the said August Streitwolf and your oratrix,
25 the defendant in said action, be dissolved, and the said parties freed from the bonds of matrimony and all the rights and privileges and obligations thereof, and the custody of the said August Streitwolf, Junior, awarded to said plaintiff.

And your oratrix shows that after the entry of the said judgment or decree the said August Streitwolf returned to Mandan, but that he remained there only a day or two and within a week after the date of said judgment or decree he had returned to the city of New York and there again taken up his abode (having finally abandoned his pretense of residing in North Dakota immediately upon the accomplishment of the object which had induced him to assume it); and that he has never since returned to said State.

And your oratrix charges and insists that the said judgment or decree of the said district court of the sixth judicial district of the State of North Dakota, in and for the county of Morton, was and is wholly void and of no effect for want of jurisdiction in said court over the subject-matter of said suit, and for want of jurisdiction of your oratrix as a party; and also because the said judgment or de-

cree was procured by fraud and in contempt of this court. That the said August Streitwolf had not a *bona fide* residence in said State for ninety days prior to the commencement of his said suit, nor for any other period of time.

That the entire proceedings of the said August Streitwolf from his first going to the said State of North Dakota until he finally left there immediately after obtaining said judgment or decree, was merely in execution of a scheme concocted for the purpose of obtaining an adjudication which could be used to defeat this suit and deprive your oratrix of her just rights as the wife of said Streitwolf; and that his presence in said State of North Dakota at any time had no other object. That in pursuance of said fraudulent scheme the said defendant resorted to a court far distant from this State,
26 where both he and your oratrix had always lived and where every witness to their conduct during their life together was to be found. In that court he calculated that your oratrix, without means, without witnesses and without the presence of friends to sustain and desist her, would not undertake herself. In that court therefore he brought forward the faults and fabricated charges set forth in his said complaint, and induced the court to take cognizance of the same by falsely pretending that he was in good faith of the State of North Dakota; and when your oratrix sought by injunction out of this court so prevent the carrying out of his design, the said defendant wilfully and deliberately violated and disobeyed said writ in contempt of this court.

And your oratrix insists that the said contrivance and the procuring of said judgment or decree by means thereof under the circumstances stated, was and is a fraud upon this court and upon your oratrix as well as upon the said district court of North Dakota in which the same was rendered, all of which actings and doings of the said defendant are contrary to equity and tend to the manifest wrong, injury and oppression.

In tender consideration whereof and forasmuch as your oratrix is without remedy except in this honorable court where matters of this nature are properly relievable.

To the end therefore, that the said defendant may without oath full, true, direct and perfect answer make to all and singular the premises, as fully as if the same were repeated, and he particularly interrogated thereto, and that your oratrix may have the same relief as if the matters herein stated had been set forth in her original bill of complaint, and it may be declared and decreed by this honorable court that the said judgment or decree so as aforesaid entered in the said suit brought by said August Streitwolf against your oratrix in the said district court of the sixth judicial district of the State
27 of North Dokata, in and for the county of Morton, is void and of no effect and that the said defendant may be perpetually enjoined from setting up or relying on the same in this suit or in any other suit proceeding whatsoever at law or in equity, and that said defendant may be required to vacate and set aside by appropriate proceedings in the said district court of the sixth judicial district of North Dakota, the said judgment or decree and that your oratrix may have such other or further relief in the premises as to

your honor shall seem meet and shall be agreeable to equity and good conscience.

May it please your honor, the premises considered to grant unto your oratrix the State's writ of subpœna issuing out of this honorable court and under the seal thereof, to be directed to the said August Streitwolf, therein and thereby commanding him on a certain day and under a certain penalty therein to be inserted to answer all and singular the premises, to stand to, abide by and perform such order and decree therein as — your honor shall seem meet and shall be agreeable to equity and good conscience.

And your oratrix will ever pray, &c.

ALAN H. & THEODORE STRONG,
Solicitors and of Counsel with Petitioner.

Answer to Supplemental Bill.

(Filed April —, 1898.)

The answer of August Streitwolf, the defendant, to the supplemental bill of the complainant, Elizabeth Streitwolf, filed in the above stated cause, or to so much thereof as this defendant is advised is material and necessary for him to answer unto, maketh answer and saith:

28 That it is true that the original bill in this cause was filed by said complainant as stated in said supplemental bill, but for the statements and contents of said original bill, your orator begs leave to refer to the same as the same now appears on record on the files of this court.

This defendant also admits that the subpœna to answer the said bill was issued out of this court and served. And this defendant also admits that the said complainant filed her petition in said cause, for alimony and counsel fees, but as to the contents thereof and the affidavits taken thereupon, this defendant begs leave to refer to the same now on the files of this court.

And this defendant also admits that he filed a petition and affidavit for the custody of his son, August Streitwolf, Junior, which petition is also upon the files of this court and is hereby referred to, and that upon the said last-mentioned petition, an order was made bearing date on the second day of November, eighteen hundred and ninety-six, whereby, after reciting that it appeared to the court that it would be for the benefit of said infant that he should be put at school as thereinafter ordered, and that at the school he should not be visited by either parent during the pendency of said suit, except as thereinafter stated; and the father having expressed his willingness to defray the expenses of such disposition of said infant, the said chancellor ordered that the said August Streitwolf, Junior, should be placed at school in the Peddie Institute at Hightstown, New Jersey, where he formerly was at school, and that this defendant should pay the expenses of removing the said August Streitwolf, Junior, to the said institute, and his expenses at the said institute, including board, tuition, suitable clothing and petty cash for per-

sonal expenditures, in such amounts as should be approved by the principal of the school, not exceeding fifty cents in any week, and that the said August Streitwolf, Junior, should not, while so
29 attending the said school, be visited there by either of his said parents (except he or she be called by the principal of the school, because of illness of the infant, so sudden as not to admit of previous application to this court for permission to make the visit demanded) unless upon application to the court order should be made to the contrary. And it was therein further ordered that further direction upon the application be reserved, as more fully appears by said order or decree now on file in said cause.

And this defendant further answering says, that his said son was placed at the said Peddie Institute in Hightstown by him, and his tuition and other expenses were paid for the period of two terms in advance according to said order; that his said son went to the Peddie Institute about the eighteenth day of November, eighteen hundred and ninety-six, and was expelled on the twenty-eighth of December, eighteen hundred and ninety-six, by the principal thereof, for alleged misconduct, and that this defendant's son, immediately upon his expulsion went back to live with his mother and has lived with her ever since, although this defendant had paid for two terms' tuition.

This defendant further answering says, that it is true not only that negotiations were entered into between the complainant and this defendant, but that a settlement of the said suit was actually agreed upon between the parties thereto in April, eighteen hundred and ninety-seven, whereby it was agreed that this defendant should support his said wife and take care of her as long as she lived and should provide for her, she representing to this defendant, however, that her allowance already made by this court was ample and more than she needed for living, and thereupon she stated to this defendant, that she would inform her attorney at once and would send her son to meet this defendant and go to New Brunswick to her attorney's office to withdraw and finish up the said suit. This
30 defendant and his said son went to the office of said complainant's solicitor at New Brunswick, and said solicitor then said that he knew of no such settlement. This defendant called several times at said solicitor's office, for the period of a week or more, and was finally informed by said solicitor that the said complainant did not desire any settlement.

This defendant denies that it was in consequence of such negotiations that no further steps were taken in said cause by the said complainant, as in said supplemental bill stated. This defendant says, that an answer was filed to the said original suit as in said supplemental bill stated.

And this defendant further answering says, that it is true that on or about the seventeenth day of August, eighteen hundred and ninety-seven, there was served upon the said complainant, in the city of Jersey City, personally, a copy of a summons and complaint in an action brought by this defendant in the district court of the sixth judicial district of the State of North Dakota in the county of Mor-

ton, praying that the bonds of matrimony between him and the said complainant be dissolved and that the custody of their child be awarded to this defendant, and for general relief.

And this defendant further answering denies that it is not true that he was, as alleged in his said complaint filed in said court in North Dakota, at the time of the commencement of said action, and for more than ninety days preceding the same, a resident in good faith of the said State of North Dakota, but on the contrary says that he was at the time of the commencement of said action in the said State of North Dakota, and for more than ninety days preceding the same, a resident in good faith of the said State of North Dakota and a citizen thereof and domiciled therein, and he denies that his residence there was pretended or at any time fictitious or fraudu-
31 lent. And he further denies that the same was designed only to give colorable jurisdiction to the said court for the purpose of said action, but on the contrary thereof, insists that his residence therein was not fictitious and fraudulent; that it was not designed to give any colorable jurisdiction to said court for the purpose of said action, but that it was obtained in good faith by this defendant more than ninety days preceding the time of the commencement of said action, and has continued ever since to the present time, and still does continue.

And this defendant further answering says that he was in fact present within the said State of North Dakota all the time, from the date of his going to the said State, as hereinafter stated, in the month of May, eighteen hundred and ninety-seven, until after the said decree or divorce was rendered, as hereinafter stated, except only during a trip to the Yellowstone park in June, eighteen hundred and ninety-seven, and when he was in Minneapolis at the Elks' convention, and came East, as hereinafter stated, in July eighteen hundred and ninety-seven.

And this defendant further says that he was formerly engaged in the wholesale liquor business in the city of New Brunswick, New Jersey, but owing to nervous prostration and other illness brought about by the worriment and trouble and continued strain and annoyance caused by said suit for divorce instituted in the State of New Jersey by his said wife, and by the continued annoyance, flowing from frequent articles appearing in the public press, and as this defendant believes, instigated by his said wife and her friends, he was, on or about the sixteenth day of November, eighteen hundred and ninety-six, forced to sell out and did sell out his said business and lease the store and premises wherein the same was carried on, with the furniture, to the firm of Becker & Tietjen, who have ever since and now are engaged in said business at the said place
32 where it was formerly carried on by this defendant. And that thereupon, this defendant left the State of New Jersey and abandoned his residence in the State of New Jersey and went to the city of New York and engaged rooms there. That on New Year's day in the year eighteen hundred and ninety-seven, defendant's said son came to this defendant at his room in the said city of New York, and professed great repentance for the conduct that he had

displayed towards this defendant previously and begged forgiveness, which this defendant willingly granted to him. On the following Monday, January third, this defendant learned that his said son had been heard publicly on the streets denouncing this defendant and threatening to fix him. Upon learning this state of facts, it completely broke this defendant down again in health and caused a renewed attack of nervous prostration, so that this defendant then and there determined to go abroad and took the first out-going steamer, the Columbia, and sailed for Genoa and Alexandria, without notifying even defendant's attorney and counsel of his intention to leave the country. This defendant says that, so completely was he broken down, that during the whole voyage over he was in an exceedingly nervous state and he lay for many days in Cairo, Egypt, sick, but gradually improved and returned to New York on the eleventh day of March, eighteen hundred and ninety-seven, after which time it was that the negotiations were taken up for a settlement as hereinbefore stated, between this defendant and his said wife. On the fifth day of May, eighteen hundred and ninety-seven, this defendant left New York by way of Chicago for North Dakota, and reached there on the eighth day of May, and arrived in Mandan, North Dakota, on the ninth day of May, with the intention of taking up his residence there, as in the meantime this defendant's physician had advised him that it would be well to go away on account of the condition of defendant's health, having been threatened with pneumonia (several
33 attacks of which he had had in former years) in addition to nervous prostration. This defendant went to the said State of North Dakota with the intention of remaining there and becoming a citizen of said State and of acquiring a domicile there, and did so acquire a residence, domicile and citizenship there; and this defendant says, that he has been ever since and now is domiciled in and a citizen and resident of the said State of North Dakota. That in June, eighteen hundred and ninety-seven, in company with some friends, this defendant started on a trip from Mandan, North Dakota, to the Yellowstone park, having purchased an excursion ticket therefor and with the intention of remaining the schedule and ordinary time of such excursions, namely, six days, and of then returning to Mandan, and from there wrote a short letter from the Mammoth Hot Springs hotel, to his son, telling him about the beauties of the park and the condition of defendant's health, and nothing else, after which the defendant returned to Mandan to his regular place of abode and remained there and went into business there on July first, eighteen hundred and ninety-seven, in which he is still engaged. In July, eighteen hundred and ninety-seven, this defendant went from Mandan to the city of Minneapolis, to attend a meeting of the Grand Lodge of the Benevolent and Protective Order of Elks, of which this defendant is a member, and from thence came to New York to attend to some business for himself, as well as for the firm of which he is a member, and also for the purpose of consulting with this defendant's family physician, as this defendant had met with an accident, injuring some of his ribs, after this defendant had gone to the State of North Dakota, but with the intention of re-

turning at once to defendant's residence and domicile in North Dakota. While in the city of New York, this defendant remained at the house of friends in said city, and did not take any lodg-
34 ings, and while there this defendant received a letter from Europe informing him of the death of his aunt, who had resided in Europe, and of being one of the beneficiaries under her last will and testament. While in the said city of New York, this defendant made inquiries about his son and met him at the Hoffman house and inquired about his wants and bought him clothing, his said son telling this defendant about his prospects. Defendant met his said son two or three times and his said son in behalf of his mother, the complainant, requested this defendant to give her some furniture to fit up two rooms, and when this defendant asked for a list of what she wished, his said son brought the answer to this defendant, that defendant knew better than his mother what she needed, and that she would leave it to this defendant. Thereupon this defendant wrote out an order on Messrs. Becker & Tietjen, who had this defendant's furniture in their possession in the city of New Brunswick, to allow his said wife to have such furniture as she desired and to assist her in every possible way to obtain the same, with the least annoyance to her. This defendant also, in the meantime, personally saw Messrs. Becker & Tietjen in regard to this matter, as they had leased this furniture and goods along with the building in the city of New Brunswick as hereinbefore stated, and arranged with them to allow this defendant's wife to have such of said furniniture as she might require. Afterwards, and after this defendant had returned to Mandan as hereinafter stated, this defendant's said wife obtained such furniture as was there, but requiring more, this defendant bought for her, at her request, a considerable amount of furniture, which she picked out of the store, and paid for the same. During this defendant's stay in New York and his meetings with his said son, he told his said son that in all probability this defendant would be obliged to go abroad to see about the inheritance which his aunt had left
35 him, and also told him considerable about the western country and life there, and especially about defendant's having gone into business in the West, which fact was generally known by defendant's former business friends in New Brunswick, about which time also this defendant received a letter from his said wife, thanking him for his kindness in allowing her the furniture which she had obtained.

Defendant says, that after remaining in the city of New York about ten days, during which time he had settled up his affairs as far as possible, in the city of New York, he returned to his home and residence at Mandan in the State of North Dakota, as he had originally intended to do, and that he then wrote to his said son, telling him that the time had come to show his fidelity and tell the truth about his mother and nothing more, and that this defendant expected his said son to be fair to both; and that this defendant had brought action for an absolute divorce against his mother and would call him as a witness. To this letter this defendant never received any reply, and a week or ten days later this defendant sent his said son

another letter, demanding an answer, and no reply was ever received by this defendant to the said second letter.

This defendant further answering says, that lately and since he obtained the decree for divorce in the courts of the State of North Dakota, he has learned that his said wife presented a petition to the chancellor of New Jersey in said original cause, and thereupon obtained a writ of injunction.

And this defendant answering says, being in good faith a resident and citizen, at the time of the presentation of said petition, of the State of North Dakota as aforesaid, and actually domiciled therein, the said chancellor was without jurisdiction to grant the writ of injunction aforesaid; and that in said petition there is no prayer for process and no process was ever actually issued thereon or served upon this defendant, either actually or constructively, nor was
36 this defendant called upon to answer said petition, and that if a writ of injunction issued thereon, it was without validity and contrary to the law. This defendant states that no answer or appearance was ever entered to said petition by this defendant, in this court.

And this defendant further answering says, that this court was without power or authority to grant substantive relief, such as was prayed for in said petition, upon the filing of a mere petition in the cause, and that if the said complainant was entitled to the relief therein sought at all, she should have filed her bill for that purpose, and this defendant prays the same benefit, advantage and objection to the said petition now, as if he had formally appeared and moved to dismiss the same, together with the injunction alleged to have been issued thereon.

And this defendant further answering says, that in and by the Civil Code of the said State of North Dakota, by section 2737 thereof, it is enacted that "divorces may be granted for any of the following causes: (1) adultery; (2) extreme cruelty; (3) wilful desertion; (4) wilful neglect; (5) habitual intemperance; (6) conviction for felony."

That in and by the said code, it is further provided, in and by section 2742, that "habitual intemperance is that degree of intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine or other like narcotic drug, which disqualifies the person, a great portion of the time, from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party." And that it is further, in and by said code, enacted in section 2743, that "wilful desertion, wilful neglect or habitual intemperance must continue for one year before either is a ground for divorce."

And in and by section 2755 of said code, it is further enacted that "a divorce must not be granted unless the plaintiff has in
37 good faith been a resident of the State ninety days next preceding the commencement of the action." And in and by section 2756 of said code, it is further enacted that "in actions for divorce, the presumption of law, that the domicile of the husband is the domicile of the wife, does not apply. After separation, each party may have a separate domicile, depending for proof upon

actual residence and not upon legal presumptions." And in and by section 2757 of said code, it is further enacted that "no divorce may be granted upon the default of the defendant or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged."

And this defendant further answering says, that on or about the ninth day of August, eighteen hundred and ninety-seven, he being then and there an actual resident and citizen in good faith of the State of North Dakota, and having been such citizen and resident in good faith of said State of North Dakota for a period of ninety days and upwards next preceding said ninth day of August, this defendant commenced an action in the district court of the sixth judicial district of the State of North Dakota, of the county of Morton, against his said wife, Elizabeth Streitwolf, for an absolute divorce, and the said Elizabeth Streitwolf was therein duly served with process and notice of said suit as is in said bill and hereinbefore stated, and such proceedings were had therein, that on the seventh day of October, in the year eighteen hundred and ninety-seven, a decree or judgment was entered in said cause, whereby it was ordered, adjudged and decreed by the said court, and the said court, by virtue of the power therein vested and agreeable to the statutes in such case made and provided, did thereby order, adjudge and decree that the marriage theretofore existing between this defendant and the said Eliza-
38 beth Streitwolf, his wife, be and the same was thereby dissolved and the said parties and each of them were freed from the bonds of matrimony, and all rights, privileges and obligations thereunder, and the custody of the minor child August Streitwolf, Junior, was thereby awarded to this defendant; a true copy of the record, proceedings and judgment-roll, of said court, and the order, decree and judgment thereof duly exemplified according to the act of Congress in such case made and provided, is hereto annexed, referred to and made a part hereof, and to which this defendant, for greater certainty, begs leave to refer.

And this defendant further answering says that by virtue of said decree and adjudication of said court, being a court of competent jurisdiction, the marriage of this defendant and his said wife has been and now is dissolved, and that they are each freed from all the obligations thereof.

And this defendant further answering says that by reason of the provision of article IV, section 1, of the Constitution of the United States, wherein it is provided that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof," the judgment in the State of North Dakota is entitled to such full faith and credit in the State of New Jersey and is conclusive between the parties.

And that under section 905 of the Revised Statutes of the United States, wherein it is provided that "the records and judicial pro-

ceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said
39 attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken, the said adjudication is final and conclusive between the parties; the said judgment or decree being final and conclusive in the said State of North Dakota wherein it was rendered, is entitled to the same faith and credit in the courts of the State of New Jersey, and that the said court in the State of North Dakota, has in and by said judgment duly and fully ascertained the fact that this defendant was, at the time of the institution of said suit, an actual resident in good faith, and had been such actual resident in good faith, in the State of North Dakota, for a period of ninety days then next preceding the institution of said suit, and that such adjudication and determination by the said court of the State of North Dakota is final, not only in the courts of the said State of North Dakota but in every other jurisdiction within the United States of America.

And this defendant answering denies that all the matters alleged in said complaint in said suit brought by this defendant as aforesaid in the courts of the State of North Dakota, were within the jurisdiction of the court of chancery of New Jersey to take cognizance of and were proper matters of defence, either by way of answer or cross-bill in this cause.

And this defendant further answering says that the said injunction issued by the court of chancery of the State of New Jersey, as in said supplemental bill stated, was not served upon this defendant, either actually or constructively in any manner, and that it is not true that this defendant secreted himself and remained in hiding, in order to avoid the strict service of the said writ.

And this defendant further answering says that he has
40 no knowledge that the writ of injunction, having been issued as aforesaid, was on or about the eleventh day of September, placed in the hands of the sheriff of Morton county, in the State of North Dakota, for service upon him, but he denies that he was in any manner informed by the said sheriff that such a writ had been left with him for service, and that he left the State of North Dakota and secreted himself and remained in hiding to avoid the service of the said writ, as is in said bill stated.

And this defendant further answering says, that he has no knowledge whatever of the employment of the said E. C. Rice, an attorney-at-law of the said State of North Dakota by the said complainant, or of his acts, but leaves the same to appear by due proof to be made thereof, according to the rules of this honorable court.

But this defendant denies that he ever received from the post-office or the mails, the envelope alleged to have been addressed to him at Mandan aforesaid, by the said E. C. Rice, nor has he ever received

a letter of that character. This defendant has no knowledge of the service of the said writ of injunction upon Messrs. Hoggatt & Caruthers, as in said bill stated, nor has he any personal knowledge of the service of the same upon the said H. G. Voss, as is in said bill stated.

And this defendant further answering says, that he denies that he had knowledge of the said writ of injunction prior to the seventh day of October, eighteen hundred and ninety-seven, or was fully or accurately informed of the issuing of the writ and the contents thereof.

And he insists that, even if this court had jurisdiction in the premises and under the circumstances so to enjoin him, yet he was not in contempt thereof, because no service of the said writ was ever made upon him, either actually or constructively.

And this defendant denies that after the entry of the said
41 judgment or decree in the said State of North Dakota that he, having returned to Mandan, remained there only a day or two and then abandoned his residence in the State of North Dakota, but on the contrary thereof, says, that about a week after the rendition of said judgment in the State of North Dakota, this defendant was obliged to come to the city of New York, first to attend to some matters of business which had been left unsettled when he had returned to Dakota in the month of July preceding, and also to arrange about going abroad on account of the legacy which had been bequeathed to him by his aunt as hereinbefore stated, and that accordingly, but without abandoning or in any way relinquishing his acquired residence in the said State of North Dakota, but with the definitely formed intention of returning thereto, this defendant came to the said city of New York in the month of October, eighteen hundred and ninety-seven, and there proceeded to settle his business affairs, and while there stayed at the house of friends in said city, during which time he was again taken ill and again threatened with pneumonia, coughing so constantly and incessantly that it was impossible for him to rest at night, or in fact to sleep for any considerable length of time. This so weakened and debilitated this defendant that he was unable to sail for Germany as early as he had originally intended, and in fact his condition of health was such, that it would have endangered his life to have gone, so that this defendant was compelled to nourish and husband his strength and attempt to become improved in health to a degree which would permit him to go into a warmer climate. By the advice of his physician, this defendant then abandoned his original idea of going directly to Germany from New York and instead thereof, went to the Mediterranean by steamer, sailing directly for Genoa, Italy, and in fact, left New York on the fourth day of December, eighteen hundred and
42 ninety-seven for Genoa, being as early a date as his health would permit, and after arriving at Genoa, this defendant was advised by the physicians there to go to Meran, Austria, and place himself under the care of the physicians there in a hyg-enic establishment, the same, as well as the climate of Meran being highly recommended for persons suffering from nervous prostration

and kindred troubles, and the treatment also being renowned for such diseases, and the mild climate of said place being peculiarly adapted to persons suffering from lung troubles. This defendant therefore went to Meran and placed himself in said institution, under the care of the physicians carrying the same on and remained there, under a strict regimen, taking the treatment as prescribed, and has found great benefit therefrom. This defendant would not have returned to the United States so soon, had it not been for the supplemental bill which was filed in this cause, during his absence at Meran as aforesaid, but has now returned in order to make answer thereto before returning to his home and residence in the State of North Dakota, where this defendant has always kept, during his absence in the East and in Europe, his habitation and place of abode, furnished for his use.

And this defendant insists that the judgment or decree of the said district court of the sixth judicial district of the State of North Dakota, in and for the county of Morton, was and is a valid and effective judgment rendered by said court, with full jurisdiction over the subject-matter of said suit and also over the parties thereto. And this defendant denies that the said judgment or decree was procured by fraud or by means of any false misrepresentations on his part or that he is in contempt of the court of chancery of New Jersey in obtaining said decree, and that as is hereinbefore stated and insisted, this defendant has had a *bona fide* residence, citizenship and domicile in the said State of North Dakota for more than ninety days prior to the commencement of his said suit and has ever
43 since continued to reside and be domiciled in the said State of North Dakota and is now a resident thereof and domiciled therein.

And this defendant further answering denies that the proceedings of this defendant from his first going to the State of North Dakota until the obtaining of the said judgment or decree *was* in execution of a scheme concocted for the purpose of obtaining an adjudication which could be used to defeat complainant's suit and deprive the complainant of her just rights as his wife, and that his presence in the said State of North Dakota had no other object. And he also denies that he resorted to a far distant court in pursuance of said fraudulent scheme, wherein he calculated that said complainant, without means, without witnesses and without the presence of friends to sustain and assist her, would not undertake herself in that court, but on the contrary thereof, charges and insists that being a *bona fide* resident of the said State of North Dakota, he had a perfect right to institute said suit in the courts of the said State and that he did so in the utmost good faith, without any fraudulent design whatsoever.

And this defendant further answering denies, that the entry of said judgment or decree was or is a fraud upon the said court or upon the said complainant or upon the said court of chancery, but on the contrary thereof, insists that the same was procured honestly, openly and without any fraud or misrepresentations upon any person or any court.

And this defendant submits to this honorable court that all and every of the matters in said complainant's supplemental bill mentioned and complained are not such as entitle said complainant in this honorable court, to any relief against this defendant, and this defendant hopes that he may have the same benefit of this defense as if he had demurred to the said complainant's bill.

44 And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLARD P. VOORHEES,
Solicitor and of Counsel with Defendant.

The People of the State of North Dakota, by the grace of God free and independent, to all whom these presents shall come or may concern, Greeting:

Know ye, that we, having examined the records and files in the office of the clerk of the district court of the county of Morton, State of South Dakota, do find there remaining a certain record of—

AUGUST STREITWOLF, Plaintiff,
vs.
ELIZABETH STREITWOLF, Defendant,

in words and figures following, to wit:

45 *Summons.*

STATE OF NORTH DAKOTA, } ss:
County of Morton, }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff,
against
ELIZABETH STREITWOLF, Defendant.

The State of North Dakota to the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer upon the subscribed within thirty days after the service of this summons upon you, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default, for the relief demanded in the complaint.

Dated at Mandan, N. D., this 9th day of August, 1897.

HOGGATT, CARUTHERS & H. G. VOSS,
Plaintiff's Attorneys.

P. O. address, Mandan, N. D.

I hereby certify and return that I received the within summons and complaint on the 9th day of August, 1897, at 9 o'clock a. m.; I further certify and return that I have made due and diligent search and inquiry to find the within-named defendant, Elizabeth Streit-

wolf, to serve the within summons and complaint upon her,
46 and that after such diligent search and inquiry I am unable to find the within-named defendant, Elizabeth Streitwolf, within my county and the State of North Dakota.

Dated August 10th, 1897.

CHARLES McDONALD,
Sheriff of Morton County, North Dakota.

STATE OF NORTH DAKOTA, }
County of Morton. }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff, }
vs.
ELIZABETH STREITWOLF, Defendant. }

The plaintiff complains of the defendant, and alleges:

I.

That the plaintiff and defendant intermarried on or about the 3d day of June, 1877, in the city of New Brunswick, State of New Jersey, and now are and ever have been husband and wife.

II.

That the plaintiff now is and for more than ninety days immediately preceding the commencement of this action has been a resident in good faith of this State.

III.

That since said marriage and particularly since the year
47 1890 the defendant has treated the plaintiff in a cruel and inhuman manner, and particularly as follows: That the defendant developed a violent and ungovernable temper, and abused and vilified the plaintiff by calling him vile and indecent names, such as whoremaster, Dutch dog, damned Dutchman, a brute, and that the defendant was during said time constantly in the habit of speaking of and concerning the plaintiff and using the words and language hereinbefore stated towards the plaintiff in the presence of friends and acquaintances, and oftentimes in the presence of total strangers; that such language and conduct of the defendant has caused the plaintiff to endure great and grievous mental suffering, humiliating him, and has so preyed upon his mind, that it became necessary in November, 1896, for him to close out his business; that since and during said time the defendant has treated plaintiff in a cruel and inhuman manner by inflicting upon him personal injuries; that she was during the time aforesaid constantly in the habit of abusing him, creating scenes and disturbances, and would work herself into fits of frenzy and strike and beat the plaintiff, and that in particular on the third day of August, 1896, at the city of New Brunswick, State of New Jersey, the defendant struck the plaintiff in the face with a mackerel, and hit him, blackening his eye, with the iron

rims of a pocketbook, cutting and lacerating his face; that the defendant's entire course of conduct towards the plaintiff since 1890 has been cruel and inhuman, she being constantly in the habit of using violent and abusive language towards him, causing him to endure great and grievous mental suffering, which has so impaired his health that it has become unsafe to live with her, and that during said time she was constantly in the habit of inflicting upon the plaintiff personal injury, causing him to endure great suffering.

For a second and further cause of action, herein, against the defendant, the plaintiff alleges:

48 I.

The plaintiff reiterates paragraph- one and two of plaintiff's first cause of action herein, and makes the same part of this cause of action.

II.

The plaintiff on informarion and belief alleges that the defendant did on or about the year 1880 commit adultery with one John S. Clark in the State of New Jersey. The plaintiff is unable to state more definitely as to the time and place of the commission of said adultery as hereinbefore stated.

III.

The plaintiff further alleges that in the month of November, 1894, the defendant stated that she was then pregnant with child, and that she was so pregnant with child with some other person than the plaintiff.

IV.

The plaintiff further alleges upon his information and belief that in the month of August, 1895, at the residence of plaintiff in the city of New Brunswick, State of New Jersey, the defendant committed adultery with one William F. Schlosser.

V.

The plaintiff further alleges on his information and belief that the defendant on divers days and times between said last-mentioned date and the commencement of this action, has committed adultery with various persons and at various times and places unknown to the plaintiff.

VI.

The plaintiff further alleges that each of said acts of adultery were committed without the consent, connivance or previous knowledge of the plaintiff, and that he has not lived or cohabited with the
49 defendant since he became cognizant of the commission by the defendant of the several acts of adultery complained of.

I.

For a third and further cause of action against the defendant herein the plaintiff reiterates paragraphs one and two of the plain-

tiff's first cause of action, and makes the same a part of this cause of action.

II.

The plaintiff alleges that the defendant, disregarding her duties as a wife towards the plaintiff has been guilty of habitual intemperance for more than three years immediately preceding the third day of August 1896; that during all of said years she has been addicted to the drinking of intoxicating liquors to excess, which said excessive drinking of intoxicating liquors has disqualified her a greater portion of the time from properly attending to her duties as a wife, and which has inflicted great mental anguish upon the plaintiff.

III.

There is one minor child living as the issue of said marriage, named August, eighteen years of age.

Wherefore the plaintiff prays that the bond of matrimony between the plaintiff and defendant be dissolved, and the custody of said minor child be awarded to the plaintiff, and for such other and further relief as may be just and equitable in the premises.

HOGGATT AND CARUTHERS AND
H. G. VOSS, *Plaintiff's Attorneys.*

STATE OF NORTH DAKOTA, }
County of Morton. }

August Streitwolf, being first duly sworn, deposes and says
50 that he is the plaintiff in the above-entitled action; that he has heard the foregoing complaint and knows the contents thereof, and that the same is true, except as to those matters stated on information and belief, and as to those he believes it to be true.

AUGUST STREITWOLF.

Subscribed and sworn to before me this 9th day of August, 1897.

CHARLES WILSON,
Notary Public, North Dakota.

STATE OF NEW JERSEY, }
County of Hudson. }

Charles A. Oliver, being duly sworn, deposes and says that he is and at the several times hereinafter mentioned was a citizen of the United States, and over the age of 21 years, and not a party to the within action, nor interested in the result of the same; that he received the annexed summons and complaint in said action on the 17th day of August, A. D. 1897, and personally served the within summons and complaint upon Elizabeth Streitwolf, the within-named defendant, on the 17th day of August, 1897, he delivering to and leaving with Elizabeth Streitwolf, the said defendant, personally, in the city of Jersey City, county of Hudson, State of New Jersey, at 14 Arlington avenue, a true copy of the within summons attached to a true copy of the complaint in said action; and I further depose and say that the said defendant was at the time of the service of

said summons and complaint, a resident of the city of New Brunswick, county of Middlesex, State of New Jersey, and that the person upon whom said summons and complaint was served by me as aforesaid is by me known to be the person mentioned as the de-
51 fendant in the within-entitled action; that I have personally known the defendant, Elizabeth Streitwolf, for over 15 years.

CHAS. A. OLIVER.

Subscribed and sworn to before me this 17th day of August, 1897.

FRANK H. HALL,
Notary Public of New Jersey.

STATE OF NORTH DAKOTA, }
County of Morton. }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff, }
vs.
ELIZABETH STREITWOLF, Defendant. }

August Streitwolf, of Mandan, North Dakota, being first duly sworn, deposes and says:

(1.) That I am the plaintiff in the above-entitled action, that the summons and complaint in this action duly verified were filed with the clerk of this court on the 10th day of August, 1897.

(2.) That this action is brought by the plaintiff against the defendant for the purpose of obtaining an absolute divorce from the defendant upon the grounds of cruelty, habitual drunkenness and adultery.

(3.) That the defendant, Elizabeth Streitwolf, does not reside in the State of North Dakota, nor has she been within the State of North Dakota since the commencement of this action up to the present time. That I know of my own knowledge that the defendant has not been within the State of North Dakota since
52 the commencement of this action, and that she now resides and ever since the commencement of this action has resided in the city of ——, county of —— and State of New Jersey, and that her post-office address is 14 Arlington avenue, city of Jersey City, N. J.; that the defendant, Elizabeth Streitwolf, is not a resident of this State, and personal service of the summons and complaint in this action cannot be made upon the defendant for the reasons hereinbefore stated; that the summons and complaint in this action was placed in the hands of the sheriff of the said county of Morton with directions to serve the same upon the defendant; that the said sheriff was unable to make personal service of the summons and complaint in this action, upon the defendant for the reasons hereinbefore stated, and contained in his return as follows:

"I hereby certify and return that I received the within summons and complaint on the 9th day of August, 1897, at 9 o'clock a. m.; I further certify and return that I have made due and diligent search

and inquiry to find the within-named defendant, Elizabeth Streitwolf, to serve the within summons and complaint upon her, and that after such diligent search and inquiry I am unable to find the within-named defendant, Elizabeth Streitwolf, within my county and the State of North Dakota.

"Dated August 10th, 1897.

"CHARLES McDONALD,
"*Sheriff of Morton County, North Dakota.*"

(4.) That I have fully and fairly stated the facts in this case to H.G. Voss, my attorney, and am by him informed, and as I verily believe, that I have a good cause of action in this suit against the defendant, as will more fully appear by my verified complaint filed
53 herein with the clerk of this court, to which reference is hereby made, and made a part of this affidavit, and that the defendant is a necessary and proper party defendant thereto.

AUGUST STREITWOLF.

Subscribed and sworn to before me this 10th day of August, 1897.

CHARLES WILSON,
[SEAL.] *Notary Public, North Dakota.*

STATE OF NORTH DAKOTA, } *ss:*
County of Morton, }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff,
against
ELIZABETH STREITWOLF, Defendant.

COUNTY OF MORTON, *ss:*

H. G. Voss being duly sworn, says that he is one of the attorneys for the plaintiff in the above-entitled action, and that no answer of demurrer or copy of either therein has been received by plaintiff's attorney, or appearance in any manner made by the defendant, and that more than thirty days have elapsed since the service of the summons was completed upon Elizabeth Streitwolf the defendant in this action.

H. G. VOSS.

Subscribed and sworn to before me this 4th day of October A. D. 1897.

[SEAL.] R. M. TUTTLE,
Notary Public, N. D.

54 *Statement of Judgment, Disbursements, and Costs.*

Amount claimed in summons, &c.....
Interest.....
Attorney's fees.....
Sheriff's fees.....
Service of summons and complaint.....
On execution.....

Clerk's fees.....
Judgment on default.....
Entering judgment.....
Docketing .....
Calendar .....
Filing.....
Satisfaction .....
Printer's fees.....
Notary's fees.....
Postage.....

STATE OF NORTH DAKOTA, } ss:
County of ——, }

—— —— being duly sworn, says he is — attorney- for the plaintiff in the above-entitled action, and that the above bill and its items of costs and disbursements therein are just and correct and have been, or will be, necessarily made or incurred in this action, to the best of deponent's information and belief.

—— ——.

Subscribed and sworn to before me, this — day of ——, A. D. 188–.

—— ——.

55 STATE OF NORTH DAKOTA, }
County of Morton. }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff, }
vs.
ELIZABETH STREITWOLF, Defendant. }

Testimony Taken before the Judge of the District Court, October 7, 1897.

AUGUST STREITWOLF, sworn and testified:

Q. You are the plaintiff in this action, are you not?
A. I am.
Q. State whether or not you have been a resident in good faith of this State for more than ninety days prior to the commencement of this action.
A. Yes.
Q. Are you engaged in any business, and if so, state what?
A. Yes; in Mandan, in the restaurant business.
Q. State whether or not you and the defendant intermarried, and if so, where and when.
A. We did; the 30th of June, in New Brunswick, N. J.
Q. You now are and ever since have been husband and wife?
A. Yes.
Q. Have you any children?
A. Yes; one boy.
Q. How old is he and what is his name?

A. 18; August.
Q. Are you financially able to take care of him?
A. Yes, sir.
Q. To educate him and bring him up?
A. Yes, sir.
Q. Have you done so in the past?
A. — have.
Q. Where is he now?
A. Near New York.
Q. In school?
A. Yes.

56 Q. State whether or not since your marriage the defendant has treated you in a cruel and inhuman manner, and if so state first what the cruelty consisted of.

A. Ever since 1890 it has been impossible to get along peaceably with her; I called in the doctor and asked what was the matter with her; the doctor said that she drinks; I went to see her father and asked what could be done with her, and he said—send her to some institution; I proposed to send her, I sent her to Atlantic City and she stayed there six or eight weeks and she still would drink; when she came back it got from bad to worse; she kept alcohol in the bed-room; she ran away from the institute; I sent her there in December, 1894.

Q. Was it a Keeley-cure institution?
A. Yes, sir.
Q. State whether it was common and customary for her to drink around the house, intoxicating liquors?
A. It was.
Q. Would she get drunk around the house?
A. She would; she would also be drunk on the public street; she would come into my store and call me a Dutch hog, and she would use other language that cannot be described; it was a common thing—the whole city knew of it.
Q. What is the fact—was she drinking around the house almost every day?
A. Yes, in 1895, the boy and I had to frequently carry her up stairs.
Q. When did she first commence to drink?
A. In 1890 I could not imagine what ailed her; I did not know for some time that she drank; she would steal the whiskey in my bed-room, my dressing case, she hid it in my room and I never knew it.
Q. Was she in the habit of drinking since 1893?
A. Yes; I did not know what ailed her till 1893.
Q. You know that since 1893 she has been in the habit of drinking whiskey to excess; and has such excessive use of liquors

57 by her, caused you to suffer great mental anguish?
A. Yes, great distress and mental anguish.

Q. Has this drinking of whiskey on her part disqualified her from properly attending to her duties as a wife?
A. Yes; she did not attend to anything.

Q. Aside from the question of drinking intoxicating drink, state if she ever inflicted any physical injury on you, and if so state what.

A. I took her back after she had ran away from the asylum, on condition that she promised me she would never touch another drop; on the 3d of August she struck me on the right eye.

Q. Has she been in the habit of using abusive language to you?

A. Yes; before anybody and everybody—calling me everything imaginable.

Q. Did she strike you in a public place?

A. Yes; right in my store.

Q. People around there?

A. Yes.

Q. When did you first come to the State?

A. The fifth of May last.

Q. You have been here ever since?

A. Yes, sir.

Caption.

STATE OF NORTH DAKOTA, }
County of Morton. }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff, }
vs.
ELIZABETH STREITWOLF, Defendant. }

This cause coming on *to* for a hearing before me this 4th
58 day of October, 1897, upon the taking of the depositions, be it known that Hoggatt and Caruthers, attorneys for the plaintiff, August Streitwolf, appeared in behalf of the said plaintiff, and that there was no appearance made in behalf of the defendant Elizabeth Streitwolf. That the taking of the said depositions *were* had at 220 Broadway, city, county and State of New York, where*fore* the following witnesses were by me first duly sworn to testify the truth, the whole truth and nothing but the truth, to wit:

FLORENCE BROSSE, being first called, testified as follows:

Q. State your name, age, residence and occupation.

A. Name, Florence Brosse, residence 82 Church street, New Brunswick, N. J., age 22, and occupation book-keeper.

Q. Are you acquainted with August Streitwolf and his wife Elizabeth Streitwolf?

A. Yes.

Q. How long have you known them?

A. Since November, 1895.

Q. Have you known them intimately since that time?

A. Yes, in a business way in their store.

Q. Were you book-keeper in Mr. Streitwolf's store?

A. Yes.

Q. For how long?

A. From November, 1895, until he sold his business in November, 1896, and I am still book-keeper to his successor.

Q. Are you acquainted with the treatment of the defendant towards the plaintiff during that time?

A. Yes.

Q. Can you state what that treatment was?

A. Well, when she was in the store she used to call him bad names and give away to fits of temper.

Q. What was the treatment of Mr. Streitwolf towards Mrs. Streitwolf during the time you were with them?

A. He was very kind and forbearing; he controlled himself towards her.

59 Q. Did he give her provocation for calling him bad names, as you have stated?

A. No; I should not think so.

Q. You can state what names she was accustomed to call him?

A. She would call him a "damned Dutchman," "Dutch dog," "crazy Dutchman," "a whoremaster;" she called those names before myself, her son, and before customers that would be in the store, and would always speak in very loud tones.

Q. Where did they live at that time?

A. Over the store.

Q. Were you in a position to hear their quarrels from the storeroom?

A. From the air shaft I could often hear.

Q. What was her disposition as to being an even or ill tempered woman?

A. Very ill-tempered—very erratic.

Q. What was Mr. Streitwolf's temperament?

A. He showed great self-control.

Q. Was she in the habit of calling him these names you have testified to in the presence of any one?

A. She would call him them in the presence of myself, his son and customers that were in the store.

Q. Did you ever see Mrs. Strietwolf use any personal violence towards Mr. Streitwolf?

A. No; I saw a mark on him that came from a strike she gave him with a metal pocket-book.

Q. When was this?

A. That was the day before she left for good, August, 1896.

Q. What was Mrs. Streitwolf's habit as to drinking?

A. She was intoxicated almost continually.

Q. She drank excessively, then?

A. I know that she used to take bottles of wine and whiskey and other liquors upstairs a great deal and come down drunk and staggering, and I would smell whiskey on her breath, and you could tell from her talk that she was drunk.

Q. Was this of frequent occurrence with her?

A. Almost every day.

60 Q. For how long a time did you know this to be her custom?

A. I noticed it the first week I was there until she left.

Q. You mean this continued from the time you went until she left, do you?

A. Yes.

Q. You may state whether or not she was encouraged in this by Mr. Streitwolf or whether he attempted to prevent it?

A. He tried to prevent her doing it.

Q. What effect did this seem to have on Mr. Streitwolf?

A. She seemed to drink all the more to spite him.

Q. I mean, how did it affect Mr. Streitwolf?

A. He was very much worried, and caused him a great deal of sleeplessness which caused his ill health; he would often sit up at night to watch her and keep her from going downstairs.

Q. Did her conduct in abusing Mr. Streitwolf as you have before testified, seem to worry him and prey upon his mind?

A. Yes; he liked a peaceful home to come to after business hours, and her conduct mortified him very much.

Q. Was he always kind and considerate with her?

A. Yes; as far as I know.

Q. Did he always provide for her?

A. Yes; he always had plenty of money, plenty of clothes, and all she wanted.

Q. Do you know whether or not she ever took the Keeley gold cure?

A. She went to a sanitarium in Connecticut for that purpose.

Q. When she drank and became intoxicated was Mr. Streitwolf kind to her, or did he abuse her?

A. He would try to put her to bed, and seemed to pity her, more than to become angry with her.

Q. Was she a woman that was easily provoked?

A. Yes; she would become irritated at the slightest thing.

Q. Were these names that she was accustomed to call Mr.

61 Streitwolf used by her without provocation from Mr. Streitwolf?

A. Yes, she had no cause for calling him such names.

Q. Did this conduct on her part continue during all the time you were there?

A. Yes, during all the time and up until the time she left.

Q. Did the defendant leave the plaintiff's house?

A. Yes, she left voluntarily.

[SEAL.] (Signed) FLORENCE E. BROSSE.

Subscribed and sworn to before me this 4th day of October, 1897.

EDITH J. GRISWOLD,
Notary Public.

STATE OF NORTH DAKOTA, }
County of Morton. }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff, }
vs.
ELIZABETH STREITWOLF, Defendant. }

MINNIE JOHNSON being called, was sworn to testify to the truth, the whole truth and nothing but the truth, and deposed as follows, to wit:

Q. State your name, age, occupation and residence.

A. Minnie Johnson, 22, servant, and reside at 304 Verona avenue, Forrest Hill, State of New Jersey.

Q. And you are acquainted with August Streitwolf, the plaintiff in this case?

A. Yes.

62 Q. Are you acquainted with Elizabeth Streitwolf, his wife, the defendant?

A. Yes.

Q. How long have you known both of these parties?

A. I did not know them until I came there the 15th of November, 1894.

Q. What do you mean by came there; where did you go?

A. Well, I came there to live, and was over two years doing the housework.

Q. Where was Mr. and Mrs. Streitwolf living at that time?

A. In New Brunswick—295 Burnet street.

Q. This was where Mr. and Mrs. Streitwolf lived at that time?

A. Yes.

Q. How long was you there as a servant in their employ?

A. Two years.

Q. What was your duty?

A. Well, I did the cooking and all the housework.

Q. During that time were you intimately acquainted with the relations of Mr. and Mrs. Streitwolf and their treatment of each other?

A. Oh, yes.

Q. Well, what was Mr. Streitwolf's treatment to Mrs. Streitwolf?

A. Kind and considerate, as far as I know, very nicely.

Q. What was her treatment of him?

A. No matter what he did she was always finding fault.

Q. Was he kind and good to her?

A. Yes.

Q. Did he provide for her all that she wanted?

A. Yes, as far as I know.

Q. Did you ever hear Mr. Streitwolf speak disrespectful to his wife, the defendant in this case?

A. No.

Q. Now state how Mrs. Streitwolf treated Mr. Streitwolf.

A. She was very disagreeable and called him bad names.

Q. Did Mr. Streitwolf ever give Mrs. Streitwolf any cause to call him bad names, or to be disagreeable to him?

A. No, not that I know of.

Q. Now you must state what Mrs. Streitwolf called Mr. Streitwolf.

A. I remember her calling him a "crazy Dutchman," "damned fool."

63 Q. How would she call him these names—in the presence of anybody else?

A. Yes.

Q. Well, in whose presence would she call him such names?

A. Well, I remember once she did it in the presence of a lady that used to come there, Mrs. Metzright.

Q. Well, did she speak this way of him in the presence of other parties?

A. Yes; but I don't remember the parties.

Q. As to being a woman of a smooth and even temperament, what have you to say about it?

A. She has a very high temper at times.

Q. Was she a woman of high and violent disposition when she became angry?

A. She was a woman of violent disposition when she was drinking.

Q. Now, you must state what, if anything, you know about her striking the plaintiff.

A. Oh, yes; she struck him with her pocketbook on the 3d of August, 1896, at 295 Burnet street, and also struck him with a mackerel.

Q. Now, just state how she came to do this.

A. Mr. Streitwolf asked me if Mrs. Streitwolf and Mr. Schlosser were in the parlor together at the time when Mr. Streitwolf was upstairs sleeping, and we were standing together and I told Mr. Streitwolf that Mr. Schlosser and Mrs. Streitwolf were in the parlor together. Mrs. Streitwolf then called me a liar and said it was not so. Mr. Streitwolf told Mrs. Streitwolf that it was so, and then Mrs. Streitwolf struck Mr. Streitwolf in the face with a mackerel and her pocketbook.

Q. Was Mr. Streitwolf's face disfigured in any way?

A. Yes; it gave him a black eye for several days.

Q. Well, Mr. Streitwolf did not speak angrily towards Mrs. Streitwolf when he told her what you said was true about Mr. Schlosser, did he?

A. No; he just said it was true.

64 Q. Well, was it true that Mr. Schlosser was with Mrs. Streitwolf at the time that you told Mr. Streitwolf that they were together?

A. Yes.

Q. When was it that Mr. Schlosser was here with Mrs. Streitwolf?

A. Well, it was in the morning, some time in summer of 1895.

Q. At their residence in New Brunswick?

A. Yes.

Q. Now just state all the circumstances of Mr. Schlosser being there at that time.

A. Well, she came downstairs and told me to go and call Mr. Schlosser and tell him that she wanted him. Mr. Streitwolf was sleeping. I called Mr. Schlosser and went to the kitchen. She closed the doors and a short time after I heard Mr. and Mrs. Streitwolf come out of one door and Mr. Schlosser came out of another; then Mr. Streitwolf asked Mrs. Streitwolf what they were doing in the parlor together, and she got angry and started to scold. He did not say any more, but went upstairs. Mr. Schlosser went down to the store.

Q. Then I understand you Mrs. Streitwolf sent down to the store for Mr. Schlosser?

A. Yes.

Q. What did she tell you at the time that she wanted you to go for Mr. Schlosser for?

A. She said she closed the doors because Mr. Streitwolf was sleeping and she did not want to wake him. I went down to the store and got Mr. Schlosser and they went in the parlor and closed the doors after them.

Q. How long were they in the parlor together?

A. Well, I don't think they were there more than fifteen minutes when Mr. Streitwolf came down.

Q. When Mrs. Streitwolf would abuse Mr. Streitwolf as you have stated, what would he do?

A. He would generally go downstairs. He would often get up from the table without eating anything on account of her abusing him so. He very seldom could sit down at the table to eat unless she had something to find fault with.

Q. She was always finding fault, was she?

A. Yes, about things there was no reason for.

65 Q. What effect did this seem to have upon Mr. Streitwolf?

A. Well, he used to get up and go off without saying anything; it seemed to worry and trouble him a great deal; he seemed to get discouraged.

Q. Was this conduct on her part of abusing and using violent language towards him of frequent occurrence, or was it a very rare thing for her to do?

A. It was a common every-day thing for her to do.

Q. How do you know what her habit was as to drinking during the time that you staid there?

A. Well, I think she drank it because she liked it; I don't know any other reason.

Q. Was she in the habit of drinking?

A. Yes.

Q. Well, can you state all that you know about her drinking?

A. She was in the habit of having bottles hid away from Mr. Streitwolf, so he would not find them, because she did not want him to know that she was drinking; she used to go down and get the bottles filled up, and then in the daytime she would drink and sleep

most of the time, and in the evening she was in the habit of roaming around the house.

Q. Did she ever get drunk that you know of?

A. Yes, I often saw her so she could not walk straight; one night she fell in the dining-room.

Q. Was she in the habit of drinking all the time?

A. Yes.

Q. How often would she get drunk?

A. Oh, sometimes she would not be sober for weeks.

Q. Then as I understand you, she would be most always under the influence of whiskey; is that correct?

A. Yes.

Q. Well, how often was she in the habit of getting drunk?

A. Sometimes it would be every day for over a week, and it was often in the morning when I got in, and in the evening when I went to bed.

Q. You mean she was even drunk when you got there in
66 the morning, and when you went to bed, and she was drunk all day?

A. Yes; she would lay down a little while and then get up and take some more.

Q. How often would she have those spells of drinking?

A. She drank every day, and sometimes, of course, it would be worse than at others, and when she went away to some place that Mr. Streitwolf sent her to sober up, after she got back she was not so bad for a while, but after a short time she got so that she drank just as often and as much as ever.

Q. Do you know where this place was that Mr. Streitwolf sent her?

A. I could not say.

Q. What would she do when she got drunk?

A. She would lay down, lay there for a little while, then get up and take some more.

Q. State whether or not she always attended to her household duties as a wife?

A. No; she did not.

Q. In what way would she neglect them?

A. Well, she used to leave almost everything to me.

Q. During the time you stayed there, state whether or not she was able to attend to her household duties at all times?

A. When she was drinking she was not able to attend to them.

Q. Did this conduct on her part seem to affect Mr. Streitwolf any way, and if so, how?

A. It worried and troubled him a great deal.

Q. Did he use his efforts to prevent her from drinking excessively as you have testified?

A. Yes, he did.

Q. This Schlosser that you spoke of, do you know whether he was William F. Schlosser or not?

A. I don't know whether it was William F., but it was William.

Q. What did he do?

A. He was getting out orders for Mr. Streitwolf in the store.
Q. As I understand then, he was a clerk in Mr. Streitwolf's store?
A. Yes.

[SEAL.] MRS. MINNIE JOHNSON.

67 Subscribed and sworn to before me this 4th day of October, 1897.

EDITH J. GRISWOLD,
Notary Public within and for New York County.

STATE OF NEW YORK, }
County of New York, } ss.:

I, Edith J. Griswold, a notary public in and for the State of New York, residing at ——, do hereby certify that the above-named witnesses, Minnie Johnson and Florence Brosse, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the above-entitled action, and that the foregoing depositions by them respectively subscribed were reduced to writing by Minnie J. Mills, a proper person, who is not interested in said action, in my presence, and were respectively subscribed by the said witnesses in my presence; that I am not counsel, attorney or relative of either party, or interested in the event of said action; and said depositions were commenced and taken, and at the time and place in said notice specified, without adjournment.

[SEAL.] EDITH J. GRISWOLD,
Notary Public in and for New York County,
Residing in said County and State.

68 STATE OF NORTH DAKOTA, }
County of Morton. }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff, }
vs.
ELIZABETH STREITWOLF, Defendant. }

This cause coming on to be heard before the court this 7th day of October, 1897, and it having been made to appear to the satisfaction of the court from the records and files herein that the original complaint in this action, duly verified, was filed with the clerk of this court on the 10th day of August, 1897, and that the affidavit of the plaintiff setting forth among other things that the defendant is a non-resident of this State and that personal service of the summons and complaint in this action cannot be made, was filed with the clerk of this court on the 10th day of August, 1897, and that the summons in said action together with the sheriff's return endorsed thereon to the effect that after due and diligent search and inquiry the defendant could not be found in this State was filed with the clerk of this court on the 10th day of August, 1897, and that thereafter said summons and complaint were personally served on the plaintiff out of the State, as required by the laws of this State, and that the defend-

ant has failed to answer the plaintiff's complaint or demur thereto, or in any manner to enter an appearance therein, within the time required by the laws of this State, and the default of the defendant having been entered herein, and the testimony of the plaintiff having been taken before the court upon written questions and
69 answers, and the depositions taken in said action having been submitted to the court, and the cause having been submitted to the court for decision, and the court having given due consideration to all the matters and evidence brought before it, in relation to said cause, doth make and file the following as its findings of fact:

I.

The plaintiff now is and for more than ninety days prior to the commencement of this action has been in good faith a resident of the State of North Dakota.

II.

That the plaintiff and defendant on the 30th day of June, 1876, intermarried in the city of New Brunswick, State of New Jersey, and now are and ever since have been husband and wife.

III.

That the defendant has treated the plaintiff in a cruel and inhuman manner by striking and beating the plaintiff in the face, without cause or provocation, and that the defendant has treated the plaintiff in a cruel and inhuman manner by using towards him vile and opprobrious language, causing the plaintiff to endure great and grievous mental suffering.

IV.

That the defendant has been in the habit of habitually using intoxicating liquors to excess which has disqualified the defendant from properly attending to her duties, and which said excessive and habitual drinking intoxicating liquors has inflicted a course of great mental anguish on the plaintiff; that the drinking of such intoxicating liquors has continued uninterruptedly for the period of three years immediately preceding the commencement of this action, and that such excessive drinking of intoxicating liquors during
70 said time wholly disqualified the defendant from attending to her duties as a wife, and which has inflicted upon the plaintiff great mental anguish.

V.

That there is one child living, the issue of said marriage, a boy, named August. That the plaintiff is a proper person to have the charge and custody of said child.

Upon the premises and findings of fact hereinbefore set forth, the court doth make and file the following as its conclusions of law:

I.

That this is an action for divorce, and the court has full power

and jurisdiction both of the subject-matter of the action, and the parties plaintiff and defendant herein.

II.

That there is a valid marriage now existing between the plaintiff and defendant.

III.

That the defendant has wilfully and without cause treated the plaintiff in a cruel and inhuman manner by striking and beating the plaintiff without any cause or reason, and by using vile and opprobrious language towards the plaintiff, causing him to endure great mental suffering.

IV.

That the defendant for more than one year previous to the commencement of this action has been in the habit of habitually using intoxicating liquors to excess, which has totally disqualified her from attending to her duties as a wife, and which has caused the plaintiff to endure great mental anguish, and that such cruelty
71 and the habitual drinking of liquor to excess by the defendant as hereinbefore found, are full grounds under the laws of this State for an absolute divorce, and that the plaintiff is entitled to the relief in his complaint demanded, to wit, a judgment and a decree of this court absolutely divorcing him from the defendant and all the bonds of matrimony and all the obligations thereof; and that the custody of said minor child, the issue of said marriage, be awarded to the plaintiff.

Let judgment be entered by the clerk of this court herein in accordance with the foregoing findings of fact and conclusions of law.

W. H. WINCHESTER,
Judge of said District Court.

Dated October 7th, 1897.

STATE OF NORTH DAKOTA, }
County of Morton. }

In District Court, Sixth Judicial District.

AUGUST STREITWOLF, Plaintiff, }
against
ELIZABETH STREITWOLF, Defendant. }

This cause coming on to be heard before the court this 7th day of October, 1897, and it having been made to appear to the satisfaction of the court from the records and files herein that the original complaint in this action, duly verified, was filed with the clerk of this court, on the 10th day of August, 1897, and that the affidavit of the plaintiff setting forth among other things, that the defendent
72 is a non-resident of this State, and that personal service of the summons and complaint in this action cannot be made, was filed with the clerk of this court on the 10th day of August, 1897,

and that the summons in said action, together with the sheriff's return endorsed thereon, to the effect that after due and diligent search and inquiry the defendant could not be found in the State, was filed with the clerk of this court on the 10th day of August, 1897, and that thereafter said summons and complaint were personally served on the defendant out of the State as required by law, and that the defendant has failed to answer the plaintiff's complaint or demur thereto, or in any manner to enter an appearance therein within the time required by the laws of this State, and the default of the defendant having been entered, and the testimony of the plaintiff having been taken before the court upon written questions and answers, and the depositions taken in said action having been submitted to the court, and the cause having been submitted to the court for decision, and the court having given due consideration to all the matters and evidence brought before it, in relation to said cause, did make and file its findings of fact and conclusions of law herein, wherein and whereby it was found and determined among other things that this is an action for divorce, that the plaintiff has been a resident in good faith of this State for such a time as to entitle him to bring and is now entitled to maintain this action, that the court has complete jurisdiction of the parties plaintiff and defendant and the subject-matter of this action; that there is a valid marriage existing between the plaintiff and defendant; that the defendant's conduct towards the plaintiff has been cruel and inhuman, and having been in the habit of striking and beating him in the face without cause or provocation and of using towards him vile and opprobrious language,
thus causing the plaintiff to endure great and grievous mental
73 suffering; that the defendant has been in the habit of using intoxicating liquors in excess which has disqualified the defendant from properly attending to her duties as a wife, and such excessive and habitual drinking of intoxicating liquors by the defendant has continued for more than one year together before the commencement of this action, and which excessive and habitual use of intoxicating liquors by the defendant has inflicted upon the plaintiff a course of great mental anguish, and that such conduct aforesaid on the part of the defendant is ground for absolute divorce under the laws of this State; that the plaintiff is entitled to the relief demanded in his complaint, namely, the judgment and decree of this court absolutely divorcing him from the defendant, and absolutely freeing him of and from all marital relations and all the obligations arising therefrom; and that the plaintiff is entitled to the care and custody of the minor child, August Streitwolf; and the court having at the same time made its order herein directing judgment to be entered herein in accordance with such findings of fact and conclusions of law, now therefore, on motion of Hoggatt and Caruthers and Voss, attorneys for the plaintiff, it is hereby ordered, adjudged and decreed by the court, and the court by virtue of the power therein vested and agreeable to the statutes in such case made and provided, doth hereby order, adjudge and decree that the marriage heretofore existing between the plaintiff August Streitwolf and the defendant Elizabeth Streitwolf be and the same is hereby dis-

solved and the said parties and each of them are freed from the bonds of matrimony and all the rights, privileges and obligations thereof, and the custody of the minor child, August Streitwolf, is hereby awarded to the plaintiff.

Witness the Honorable W. H. Winchester, judge of said
74 district court in and for said county of Morton, State of North Dakota, with the seal thereof affixed this 7th day of October, 1897.

A. O. MORCK,

[SEAL OF COURT.] *Clerk of the District Court in and for Morton County, North Dakota.*

STATE OF NORTH DAKOTA,)
County of Morton.)

I, A. O. Morck, clerk of the district court in and for the county of Morton, State of North Dakota, do hereby certify that the said district court in and for the county of Morton, is a court of record and general jurisdiction; that I have compared the attached summons and complaint in said action, together with the sheriff's return endorsed on said summons, and the affidavit of service of Charles A. Oliver, and the attached affidavit of non-residence of the defendant, August Streitwolf, and the attached affidavit of no answer of H. G. Voss, and the attached testimony of August Streitwolf, and the attached depositions of Florence Brosse and Minnie Johnson, and the notary's certificate attached thereto, the attached findings of fact and conclusions of law of the judge of said court, and the attached final decree, made, filed and entered by said court in said action, together with all the endorsements and filings on each and all of said papers with the originals thereof now on file in my office, and that the same and each of them are true and correct copies of the said originals and of the whole thereof, together with the endorsements and filings thereon, and that the said decree remains unappealed from, and is a final decree.

75 Witness my hand and official seal at Mandan, North Dakota, this 22d day of December, 1897.

[SEAL.] A. O. MORCK,

Clerk of the District Court in and — the County of Mandan, North Dakota.

STATE OF NORTH DAKOTA,)
County of Morton.)

I, W. H. Winchester, the sole presiding judge of the district court in and for the sixth judicial district of the State of North Dakota, including the county of Morton, do hereby certify that the said court is a court of record and general jurisdiction, and that I have examined the foregoing certificate and attestation of A. O. Morck, the clerk of the district court in and for said county of Morton, and I hereby certify that the said A. O. Morck, who executed the said cer-

tificate and attestation is the clerk of the said court, and that the said certificate is in due form of law.

W. H. WINCHESTER,
Judge of the District Court in and for the Sixth Judicial District, State of North Dakota.

STATE OF NORTH DAKOTA, }
County of Morton. }

I, A. O. Morck, the said clerk of the district court in and for the county of Morton, State of North Dakota, do hereby certify that the Honorable W. H. Winchester, who executed the foregoing certificate, is the sole presiding judge of the said sixth judicial district, State of North Dakota, including the county of Morton, and that the
76 signature to the foregoing certificate is the signature of the Hon. W. H. Winchester, judge of said district court, and is genuine.

Witness my hand this 22d day of December, 1897.

A. O. MORCK,
Clerk of the District Court in and for the County of Morton, State of North Dakota.

Replication in common form to supplemental answer filed by complainant.

Depositions Taken De Bene Esse.

The depositions of witnesses produced on the part of said complainant and defendant respectively, and taken *de bene esse* before me, John H. Watts, a special commissioner appointed for that purpose by an order in said cause, I having first been duly sworn, as by my oath hereto annexed appears, at the First national bank in Mandan, in the county of Morton, and State of North Dakota, on Tuesday, the 25th day of October, in the year eighteen hundred and ninety-eight, in the presence of B. W. Shaw, Esq., on behalf of said complainant, and H. G. Voss, Esq., on behalf of said defendant, in pursuance of a notice, of which a copy is hereto annexed, and agreeably to a stipulation on file in said cause, and a copy whereof is also hereto annexed.

JOHN H. WATTS,
Commissioner.

77 E. C. RICE, a witness produced on the part of said complainant, being by me first duly sworn according to law, on his oath saith, being examined by B. W. Shaw, Esquire:

Q. Are you a resident of the city of Mandan, State of North Dakota, and Morton county? State your business.

A. I am a resident of the city of Mandan, State of North Dakota, Morton county, and my business is practicing attorney.

Q. State whether or not you have had any connection in the case of Elizabeth Streitwolf, complainant, against August Streitwolf, defendant, pending in the court of chancery, New Jersey.

A. About a year ago I transacted a little business for the attorneys in the case.

Q. State the nature of the business you transacted.

A. On the 11th of September, 1897, I received from Alan H. & Theodore Strong, attorneys of New Brunswick, a writ of injunction issued from the court of chancery of New Jersey, issued in the case of Elizabeth Streitwolf, complainant, against August Streitwolf, to be served upon Mr. Streitwolf; about ten o'clock on that day I gave said injunction to the sheriff of this county, Charles McDonald, to be served upon said Streitwolf; he reported to me that afternoon that he thought Mr. Streitwolf had got wind of it and was keeping out of the way.

(Defendant moves to strike out as incompetent on hearsay testimony—"that he thought Streitwolf had got wind of it, and was keeping out of the way.")

And returned it to me, I think the next day, unserved. He made an affidavit giving reasons why he couldn't serve it; said affidavit I sent to the attorneys with the original writ.

78 Q. Did you make any further effort to serve this injunction upon Mr. Streitwolf?

Objected to as irrelevant and immaterial.

A. The injunction was again sent back to me with the request that I would find him if I could, and at all events notify his attorney, H. G. Voss, of said writ, which I done, and also gave Mr. Voss a copy, about the 25th of September.

Q. Did you have any conversation with Mr. Voss, Mr. Streitwolf's attorney, on or about the 13th day of September, 1897, with regard as to whether or not he had knowledge of this writ?

A. I had a conversation with Mr. Voss about the 13th of September, 1897, about this writ of injunction, and told him at the time how it was.

Q. Did Mr. Voss make any admissions to you as to his knowledge of the writ, and the effort to serve it.

A. He admitted that he knew about the writ, but don't remember now that he admitted anything about serving it.

Q. In your affidavit you say that you notified Mr. Voss, Mr. Streitwolf's attorney, of the injunction, and it was an injunction issued from the court of chancery of New Jersey, restraining said Streitwolf from proceeding with the divorce suit pending in the district court of Morton county; state, if you will, as nearly as possible, the statement you made, and if it was true.

A. That statement was true; I also notified Mr. Voss, Mr. Streitwolf's attorney, that it was a writ of injunction issued at the court of chancery of New Jersey, restraining said Streitwolf from proceeding with the divorce suit pending in the district court of Morton county.

Q. About what time was that?

A. On the 13th of September.

Q. Do you know whether or not Mr. Streitwolf left town on the 11th of September, 1897?

79 A. The last time I saw him was in the afternoon of September 11th, 1897; I did not see him again until after his divorce had been granted.

Q. What time was that?

A. I do not know.

Q. Do you know whether or not Mr. Streitwolf, after his divorce had been granted, immediately left the State?

Objected to as incompetent and irrelevant and immaterial, and upon the further grounds that it is sought to impeach by this testimony a finding of fact made and entered by the district court in and for the county of Morton, State of North Dakota, in an action wherein August Streitwolf was plaintiff and Elizabeth Streitwolf was defendant. Upon the further ground that the residence of the defendant in this case has been established and determined by the courts of North Dakota in an action wherein August Streitwolf, the defendant herein, was plaintiff, and the complainant herein, Elizabeth Streitwolf, was defendant, and is conclusive and binding upon the courts of New Jersey, and can only be reviewed by a proper application to the courts of North Dakota.

A. I saw Mr. Streitwolf here for several days afterwards; I think about a week after his divorce had been granted.

Q. When did you see him again?

Objected to as before.

A. The latter part of April or the fore part of May, 1898.

Q. Do you know how long a time Mr. Streitwolf was here in the spring of 1898?

Objected to as before.

A. No; I don't know that I do.

80 Q. State whether or not, if you know, Mr. Streitwolf was continuously in Mandan between May 9th, 1897, and the 9th day of August, 1897.

Objected to as before.

A. I don't know.

Q. State whether or not, if you know, Mr. Streitwolf has business here.

Objected to as before.

A. Personally I do not know; I understood he was interested in business here.

Q. Did you make any further effort to serve this injunction to said August Streitwolf other than placing it in the hands of the sheriff?

Objected to as irrelevant and immaterial.

A. On or about the 25th of September, 1897, I mailed a true copy of said writ of injunction to said August Streitwolf, directed to him, and placed in the post-office in the city of Mandan, North Dakota, with postage paid; I have never seen it since.

Q. The letter in which you sent this copy of the writ was never returned to you, was it?

A. Said letter was never returned to me.

Q. Did you make any inquiries about this time as to where Mr. Streitwolf was, and if so, what information did you receive on the subject?

Objected to as irrelevant and immaterial.

A. I inquired at the post-office in said city of Mandan, and they told me they could give me no information on that point: that his mail was called for; and afterwards either Mr. or Mrs. Bloom told me that Mr. Bloom received his mail and sent it to him.

Moved to strike out as incompetent and hearsay testimony.

81 The witness now being shown Defendant's Exhibit "A," is asked if this is a copy of the writ of injunction that was given to Mr. Voss, the attorney for Mr. Streitwolf, and also a copy of the injunction that was mailed at the Mandan post-office to Mr. Streitwolf.

Objected to as incompetent and irrelevant, and not as the best evidence.

A. This is a copy of the writ I delivered to Mr. Voss and mailed a copy to Mr. Streitwolf.

At this point the defendant asks the privilege of making a few preliminary inquiries.

Q. Mr. Rice, did you make this copy, Plaintiff's Exhibit "A," from the original writ?

A. I did not make this copy.

The defendant now objects to introducing of Plaintiff's Exhibit "A" upon the grounds that it is not sufficient evidence, and not proved to be a copy of the original writ of injunction.

Examination resumed by B. W. SHAW, Esquire:

Q. State whether or not Plaintiff's Exhibit "A," shown to you, is a copy of the original writ sent to you, and received by you, on or about the 11th day of September, 1897, for service upon August Streitwolf.

Objected to as irrelevant and incompetent, and not the best evidence, not being a copy of the original writ.

A. I think it is a copy of the original writ.

Exhibit "A" offered in evidence.

And being cross-examined by H. G. Voss, Esquire, the witness further saith:

Q. Mr. Rice, you have been living here continuously in

82 the city of Mandan since the fore part of May, 1897, have you not?

A. I have lived in the city of Mandan since the fore part of May, 1897.

Q. Have you known Mr. Streitwolf since May, 1897?

A. I have known him since the latter part of the spring of 1897.

Q. Since Mr. Streitwolf's residence in this State has he participated in public affairs, elections and caucuses, to your knowledge?

A. Yes, he participated in the caucus for the election of delegates to the convention to send delegates to the Republican State convention, July, 1898.

Q. State whether or not you were chairman of that caucus.

A. I was chairman of that caucus.

—. Referring to chapter 8 of the Political Code of the Revised Code of the State of North Dakota, article I of said chapter, and section 479, will you read same?

(Witness reading:)

"Who entitled to vote.—Every male person at the age of twenty-one years or upwards who shall have been a resident of this State one year, six months in the county, and ninety days in the precinct next preceding the election, who is a citizen of the United States or who has declared his intention to become such one year and not more than six years prior to such election conformably to the naturalization laws of the United States, or any person of Indian descent, who shall have severed his tribal relations two years next preceding such election, shall be entitled to vote; provided he has complied with the provisions of any law which is now or may be in the future in force relating to the registration of voters. And all persons possessing the qualifications mentioned in this section, and who have resided in this State, except as otherwise provided in the Constitution, provided, however, that persons shall vote in the precinct where they reside and not elsewhere."

83 I desire to call your attention to section 6898 of chapter 5 of the Penal Code of the Revised Code of the State of North Dakota. Will you read the same?

(Witness reading:)

"Unlawful voting at caucus.—Every person who is not a qualified elector of the ward or election precinct in which any caucus or primary meeting is held, and having for its object either immediately or ultimately, the nomination or selection of any delegate, or of any candidate for a public office to be voted for at any election in this State, who in any manner votes upon any question or issue pending before or submitted to such caucus or primary meeting, is guilty of a misdemeanor."

Moved to strike out the last two answers on the grounds that the same is irrelevant, incompetent and immaterial.

Q. State whether or not it has been generally understood in this community in which you reside that the defendant, Mr. Streitwolf, has been a resident of the city of Mandan, since May 9th, 1897, and has been such up to the present time?

Objected to on the grounds that the question calls for the opinion of the witness, and not as knowledge, and is incompetent.

A. I do not ever remember of hearing the matter discussed. I heard him spoken of as being a resident since then.

Moved to strike out the answer; that it is hearsay and incompetent.

Q. You have always considered him as a resident in good faith in this State for a period of at least one year since July 16th, 1897?

84 Objected to on the grounds that no foundation has been laid for such testimony.

A. Yes; I have always supposed him to be.

Upon redirect examination by B. W. SHAW, Esquire, the witness further saith:

Q. Have you any actual knowledge that Mr. Streitwolf is a *bona fide* resident of this State?

A. I have no knowledge except seeing him here, and what he has told me.

Q. What has he told you?

A. He has claimed that he was.

Q. Did he ever admit to you that he was a resident here for the purpose of securing a divorce?

A. No; he never did make an admission of that kind to me.

Q. Did he ever state to you that he was engaged in any business here?

A. I don't think he ever did.

E. C. RICE, *Witness.*

Sworn and subscribed before me this 25th day of October, 1898.

J. H. WATTS,
Commissioner.

C. L. TIMMERMAN, a witness produced on the part of said complainant, being by me first duly sworn according to law, on his oath saith, being examined by B. W. Shaw, Esquire:

Q. State your residence and business.

A. Mandan, North Dakota; cashier of First National Bank of Mandan.

Q. State whether or not you are acquainted with Mr. Streitwolf, the defendant in this action.

A. Yes, sir.

Q. When did you become acquainted with him?

85 A. In the early part of May, 1897.

Q. Can you state whether or not he was a continuous resident of the city of Mandan from about the 15th of May, 1897, to September 7, 1897?

A. As near as I can remember I think he was a constant resident, but particularly I could not say; Mr. Streitwolf was down to Fort Yates with me for three days.

Q. Do you know whether Mr. Streitwolf left the city of Mandan

some time in September, 1897, and if so, how long was he away, if you know?

A. I do not know.

Q. Has he been a continuous resident of this city since his arrival here in May, 1897, to the present time?

A. It depends upon what a continuous residence means?

Q. Has he lived here all the time?

A. As far as the bank is concerned will say that he has been doing business constantly with us since that time.

Q. Has Mr. Streitwolf lived here continuously from about the 9th of May, 1897, up to the present time?

A. As near as I can remember Mr. Streitwolf has been away at certain periods; I cannot state exactly how long the periods were he was away; he was at Omaha, Yellowstone park and Europe, so he told me.

Q. Do you know when Mr. Streitwolf obtained his divorce?

A. No, sir.

Q. Do you know whether or not Mr. Streitwolf was here in Mandan between the middle of October, 1897, and the latter part of April, 1898?

A. I do not know.

Q. Do you know whether or not Mr. Streitwolf's residence here was for any other purpose than for obtaining a divorce?

A. Mr. Streitwolf told me during the early part of his residence that he expected to go into a business of some kind. I remember on the Fort Yates trip he was very much afraid of being taken sick again, and said that he enjoyed excellent health since he came here and would probably remain here. It rained for two days
86 like blazes, and we lay*ed* over one day on the Cannon Ball so as to avoid driving forty miles in the rain and catching a cold.

And being cross-examined by H. G. Voss, Esquire, the witness further saith:

Q. Your acquaintance with Mr. Streitwolf runs from what date?

A. About the 10th of May, 1897.

Q. Have you since that time become intimately acquainted with him?

A. Fairly so.

Q. Since his residence here have you known him to participate in local affairs; elections or caucuses?

A. Yes.

Q. State if he ever participated in caucuses, and if so, state where and when.

A. It was at the caucus held at Mandan in July, 1898, for the election of delegates to the State convention Mr. Streitwolf voted.

Q. Since May, 1897, up to the present time, has it been generally understood in this community that Mr. Streitwolf is a resident here?

Objected to as irrelevant and incompetent, as calling for the opinion of the witness.

A. I think the impression in the community is that Mr. S wolf is a resident here, and has been since May 9th, 1897.

Q. Aside from his participating in public affairs, to which have already testified, do you know whether he holds any under the governor of this State?

A. I do not know personally, but hear that he has been o governor's staff.

Moved to strike out.

Q. Since May 10th, 1897, I will ask you to state if Mr. Strei has kept an account in your bank.

A. We consider Mr. Streitwolf's one of the active accounts o books since May 10th, 1897, up to the present time.

87 Redirect examination:

Q. Do you know whether Mr. Streitwolf had any legal righ participate in any caucus for political purposes in this State?

A. Inasmuch as his vote was not challenged I presume he h right to vote at the caucus in July, 1898.

C. L. TIMMERMAN, Wit

Subscribed and sworn before me this 25th day of October,

J. H. WATTS,
Commissio

The further taking of depositions in this case is adjourne consent) until the 26th day of October, A. D. 1898, at half past s o'clock in the evening, at the same place.

J. H. WATTS,
Commissio

The further taking of depositions in said cause was resume this 26th day of October, A. D. 1898, at half past seven o'clo the evening at the place aforesaid, in the presence of the same sons as aforesaid before me.

J. H. WATTS,
Commissio

88 CHARLES McDONALD, a witness produced on the part o complainant, being by me first duly sworn, according to on his oath saith, being examined by B. W. Shaw, Esquire:

Q. Are you a resident of the city of Mandan?

A. Yes.

Q. What, if any, is your official position?

A. Sheriff of Morton county.

Q. Are you acquainted with Mr. Streitwolf, the defendant in action?

A. Yes.

Q. State whether or not you received a writ of injunction is out of the court of chancery of New Jersey to be served him.

Objected to as irrelevant.

A. Yes.

The witness being shown Complainant's Exhibit "A," is asked if this is a copy of the writ of injunction that came into his hands to be served upon the defendant, August Streitwolf.

A. I think it is.

At this point the defendant asked leave to inquire: Mr. McDonald, when have you last seen the original writ of injunction in this case?

A. About September, 1897.

Q. Are you able to testify that the paper shown you as Complainant's Exhibit "A" is a true copy of the original writ of injunction?

A. I wouldn't say for sure, but think it is.

Examination resumed by Mr. SHAW:

Q. State whether or not you received a writ of injunction, wherein August Streitwolf was defendant and Elizabeth Streitwolf, complainant, for service upon the defendant.

89 Objected to as irrelevant and immaterial.

A. Yes, I did.

Q. State the date you received it.

Objected to as before.

A. I think it was about the 10th or 11th of September, 1897.

Q. From whom did you receive this writ of injunction?

Objected to as before.

A. E. C. Rice.

Q. What did you do in your efforts to serve it?

Objected to as before.

A. I went up to Hawkins' place and inquired if he was there, and they told me he wasn't; I looked around town and was unable to find him.

Q. Did you know he left town that day?

Objected to as before.

A. I think he did.

Q. You didn't see him until some time in October that year?

A. I don't remember when it was; it was after I had returned the papers to Mr. Rice.

Q. Do you know whether or not Mr. Streitwolf knew what kind of paper you had to serve upon him?

Objected to as before.

A. No.

Q. Do you know whether or not Mr. Streitwolf had any knowledge of the contents of that paper?

90 Objected to as before.

A. I don't know.

Q. Did you tell Mr. Hawkins what kind of a paper you had to serve upon Mr. Streitwolf?

Objected to as before.

A. Yes.

And being cross-examined by H. G. Voss, Esquire, the witness further saith:

Q. When did you return those papers to Mr. Rice?

A. About the 15th of September.

CHARLES McDONALD, *Witness.*

Sworn and subscribed before me this 26th day of October, 1898.

J. H. WATTS,
Commissioner.

The further taking of depositions in this cause is adjourned, by consent, until the 27th day of October, at ten o'clock in the forenoon, at the same place.

J. H. WATTS,
Commissioner.

The further taking of depositions in said cause was resumed on this 27th day of October, A. D. 1898, at ten o'clock in the forenoon at the same place aforesaid in the presence of the same persons as aforesaid, before me.

J. H. WATTS,
Commissioner.

The defendant by introducing any evidence on the question of residence hereby expressly reserves the right to object to such
91 testimony upon the ground that the same is irrelevant and immaterial, and upon the further ground that the question of residence of the defendant herein having been determined by the district court in and for the county of Morton, State of North Dakota, in an action wherein the defendant herein, August Streitwolf, was plaintiff, and the complainant herein, Elizabeth Streitwolf, was defendant, and that such finding of fact is conclusive and binding upon the courts of the State of New Jersey.

H. D. STEVENSON, a witness produced on the part of said defendant, being by me first duly sworn, according to law, on his oath saith, being examined by H. G. Voss, Esquire:

Q. Where do you reside?
A. Mandan, North Dakota.
Q. And lived here a long time?
A. Three years.
Q. What is your occupation?
A. Railroad work.
Q. Capacity?
A. Conductor.

Q. Are you acquainted with Mr. Streitwolf, the defendant?
A. Yes.
Q. How long have you known him?
A. About one and a half years.
Q. From what time?
A. He first came to my house in May for a room till about the 10th of August; a year ago last May, in the spring of 1897; I have known him since.
Q. State whether or not Mr. Streitwolf rented apartments in your house.
A. Yes.
Q. When?
A. 9th of May, 1897.
Q. How long did he continue to occupy those apartments?
A. To the 10th of August, I think.
Q. Did he live in these apartments in the city of Mandan continuously to that time?
A. What I consider so; he went away on business once,
92 and was away two or three days at a time; he has paid his rent all the time.
Q. You say that he left; where did he go to?
A. He went East on a visit, I think; then he came back to the Inter-Ocean hotel; he went to Diamond Lake, Michigan.
Q. Has Mr. Streitwolf lived in the city of Mandan, State of North Dakota, Morton county, since that time?
A. Yes.
Q. Has he been engaged in any business during the time that you have known him?
A. I should judge he had; I understood he went into business with Mr. Hawkins.

Moved to strike out the answer as expressing the opinion of the witness.

Q. Have you seen him in that place of business and have charge of it?

Objected to as illegal.

A. Yes; I have.

And being cross-examined by B. W. SHAW, Esquire, the witness further saith:

Q. You say that he came to your house on the 9th of May, and left there on the 10th of August?
A. Yes.
Q. Was he absent from town between these two dates?
A. Yes, he was absent on a matter of business two or three days.
Q. Have you any personal knowledge that Mr. Streitwolf had any business interests in this town?
A. Nothing more than that he had a contract with Mr. Hawkins at one time.

Q. Did you read that contract?

A. Yes.

Q. Do you remember what the contents of it were?

A. Part of them; I couldn't repeat it.

93 Q. What disposition was made in that contract in regard to profits and losses?

A. I don't remember; I didn't take any particular notice of it as I had no interest in it; Hawkins told me he had a partner in the deal.

Q. What business was it that he was partner in?

A. Saloon business.

Q. Do you know whether or not that is a legal business under the laws of the State of North Dakota?

A. I believe it is not.

Q. Where did Mr. Streitwolf go to from your place when he left there?

A. I couldn't say positively whether he left for the East or not, but I think he left his trunks at the Inter-Ocean hotel, and then went East for a day or two; I know he went East very shortly.

Q. Do you know anything about whether Mr. Streitwolf left this town about the 11th of September, 1897?

A. I couldn't say as to the date.

Q. Do you know whether or not Mr. Streitwolf left the town and State about the middle of October, 1897?

A. No, sir.

Q. Can you state whether he was here at any time between about the middle of October, 1897, and the latter part of April, or the first of May, 1898?

A. No, sir.

Q. You have no recollection of seeing him in the time I have stated?

A. I have no recollection of seeing him myself.

Q. Did you ever have any conversation with Mr. Streitwolf as to his reasons for being in this country?

A. No.

Q. You simply know he has been living here and don't know his purpose in being here?

A. I simply know that he has lived here, and I only know what his purpose is from hearsay.

Q. You never heard from him what his purpose was?

A. No, not directly.

Q. What do you mean by "not directly"?

94 A. I mean that I myself have only heard it outside.

Q. What is the common report as to his object in being here?

Objected to as incompetent on hearsay.

A. The general hearsay is that he is here for a divorce; whether he is or not I couldn't say as to that. It is something that never concerned me, and I never asked him, or heard him say so.

On redirect examination by H. G. Voss, Esquire, the witness further saith:

A. No, I have heard it on the street; people say that he is here for a divorce.
Q. That is the report that you hear now, is it?
A. No, I have not heard it lately.
Q. Is that true of anybody that comes here as a stranger?
A. Very nearly all of them.
Q. Sort of fad in this town?
A. Yes.
Q. A stranger is a divorcee?
A. Lots of people come here that are not divorcees. There are a number of strangers here who are more or less suspected; I couldn't say positively; it does not interest me; I never asked them their business.
Q. You say, Mr. Stevenson, that since Mr. Streitwolf has been here he has been engaged in the saloon business with Mr. Hawkins?
A. Yes.
Q. Mr. Stevenson, the saloon business in this town is conducted openly, is it not?
A. Yes.
Q. What other lines of business in connection with this saloon business of Hawkins & Streitwolf?
A. Pool and billiards.

And being further examined by Mr. SHAW, the witness further saith:

Q. I suppose you are aware that there is a law in this State prohibiting the sale of liquors?
A. Yes.
95 Q. And that the running of saloons in that way is a violation of that law?
A. I couldn't answer that question, but should judge it was.
Q. Did you ever see any sign on Mr. Hawkins' place of Hawkins & Streitwolf?
A. I have never seen Hawkins' name on the building that I know of.
Q. Did you ever see any sign anywhere about any building of "Hawkins & Streitwolf"?
A. No.
Q. Have you seen a sign of W. Hawkins anywhere about the place?
A. No, sir.

Redirect examination:

Q. Is the saloon business licensed in the city of Mandan?
A. Yes.

H. D. STEVENSON, *Witness.*

Sworn and subscribed before me this 27th day of October, 1898.

J. H. WATTS,
Commissioner.

The further taking of depositions in said cause was resumed on the 28th day of October, A. D. 1898, at half past ten o'clock in the forenoon, at the same place aforesaid, in the presence of the same persons before me.

J. H. WATTS,
Commissioner.

W. S. BARROWS, a witness produced on the part of said defendant, being by me first duly sworn according to law, on his oath saith, being examined by H. G. Voss, Esquire:

Q. Where do you reside?

A. In Mandan.

96 Q. How long?

A. Sixteen years.

Q. What is your occupation?

A. Hotel-keeper.

Q. Do you run the Inter-Ocean hotel?

A. I own, operate, and occupy the Inter-Ocean hotel.

Q. Are you acquainted with the defendant, Mr. Streitwolf, and if so, how long have you known him?

A. I am acquainted and have known Mr. Streitwolf since August, 1897.

Q. Has your acquaintance with him since that time become intimate?

A. As intimate as a hotel proprietor is usually with his guests.

Q. I will ask you whether or not since September, 1897, Mr. Streitwolf has been occupying apartments in your hotel?

A. Mr. Streitwolf has been a guest of mine since August 10th, 1897 continuously to the present time.

Q. Has Mr. Streitwolf been a resident of this city, county, and State of North Dakota since August, 1897?

Question objected to as calling for a legal conclusion.

A. I consider that he has.

Q. Has he since that time been occupying apartments in your hotel?

A. He has.

Q. Mr. Barrows, did you ever know Mr. Streitwolf's residence in the city prior to August 10th, 1897?

Q. Mr. Streitwolf was in the city several months prior to his taking apartments in my hotel.

Q. But you are not able to state when he came to this city?

A. I do not know what date he arrived in the city.

And being cross-examined by B. W. SHAW, Esquire, the witness further saith:

Q. You say Mr. Barrows that Mr. Streitwolf had rooms in your

hotel on the 10th of August, 1897; has he occupied these rooms personally and continuously since that time?

A. I should say yes.

97 Q. Has Mr. Streitwolf been in this town continuously from the 10th of August, 1897?

A. Mr. Streitwolf hasn't been here in flesh and blood constantly.

Q. Mr. Barrows, was Mr. Streitwolf away from the city of Mandan during the latter part of the month of September and the early part of the month of October of 1897?

A. He was absent during the latter part of October, 1897, to the best of my recollection.

Q. Was he not absent from Mandan through the latter part of the fall and all of the winter and early spring of 1897–'98?

A. I don't know just how long he was absent; he was away the greater part of the winter, and obliged to go on account of his health. He left our hotel with this understanding; he was sick for several weeks prior to his departure; I know from my conversation with the doctor that he was obliged to go somewhere for his health.

Moved to strike out the latter part of the question in regard to his health, as not being responsive to the question.

Q. Has not Mr. Streitwolf been absent from Mandan for several months at a time during his claimed residence here?

A. No; only during his absence in the winter.

Q. He has been constantly here during the spring and summer of this year?

A. I couldn't say as to that, but he has been here most of the summer.

Q. When did he return to the hotel this fall?

Q. Mr. Streitwolf doesn't register when he comes here; he is a permanent guest in the house and goes and comes when he pleases, and I have no record of it in the house; I do not know whether he has been here ten days or two weeks.

Q. Do you know what purpose Mr. Streitwolf had in coming to this town?

A. No, I do not know, except what I might surmise.

98 Q. Did you ever have any conversation with him in regard to his purpose in being here?

A. No.

Q. Have you ever heard him say what his purpose was in being here?

A. I don't recollect that I have.

Q. Do you know of his absence from Mandan between the 11th of September, 1897, and about the 7th of October, 1897?

A. I don't know as I am right in my recollection; Mr. Streitwolf took a trip to the Yellowstone park, but I don't know whether it was about that time or previous.

Upon redirect examination by H. G. Voss, Esquire, the witness further saith:

Q. Mr. Barrows, you stated in answer to a question on cross-ex-

amination that when Mr. Streitwolf went away in October, 1897, he went on account of sickness; I wish you would state fully why he went and in what condition his health was at that time.

Objected to as irrelevant and incompetent.

A. Mr. Streitwolf was taken suddenly ill at the hotel and under the care of Dr. Reed for a week or ten days, and Reed stated to me that he thought——

Objected to what the doctor stated to the witness.

—he was having a bad time with his heart, and was generally run down in his whole system. He stated to me that the man ought to be gotten out of town; go somewhere where he could receive proper medical treatment.

Moved to strike out all that part of the answer as relates to what the doctor said to the witness, as hearsay and incompetent.

Q. From your own knowledge and personal observation are you able to state that Mr. Streitwolf was sick at that time?

99 A. I am able to state that he scared me, and I thought the man would die; I don't think Mr. Streitwolf realized the condition he was in at that time.

Q. You spoke of Dr. Reed; I will ask you if he is alive now?

A. Dr. Reed is dead.

Moved to strike out the question and answer as irrelevant, incompetent and immaterial.

Q. Since Mr. Streitwolf's residence in Mandan, I will ask you to state whether you know he is following any occupation.

A. Yes; Mr. Streitwolf gave me to understand, and showed me papers relative to his arrangements with some life insurance company, and he endeavored to have me take out a policy in the company he represented, stating that he had several prospective parties that were going to take insurance from him.

Q. So that you say he has been engaged in that class of business and solicited insurance here?

A. Yes; because he solicited my insurance.

And upon further cross-examination by B. W. Shaw, Esquire, the witness further saith:

Q. What company was that?

A. I do not remember the company because I was not interested in it; I had no intention of taking life insurance, and don't remember the company he represented.

Q. He hasn't followed that business very vigorously, has he?

A. I couldn't say as to that; I know of my own knowledge of his endeavoring to make a policy for me.

Q. That is all you know of his insurance business?

A. As far as he has progressed I couldn't say.

Q. Since Mr. Streitwolf has been here he has not seemed to have other business, has he?

A. Well I couldn't say as to that; I have no time to watch the guests.

Q. He has conducted himself as a gentleman of leisure since he has been here, has he not?

100 A. He has always conducted himself as a gentleman, certainly.

Q. He seemed to have considerable leisure time on his hands?

A. I consider that Mr. Streitwolf is apparently a man of means, and conducts himself as a man of business that has capital to work with.

Q. You would not think that a man of means would come to this town for the sole purpose of engaging in life insurance, would you?

A. Well, there is no accounting for a location that a man may select for soliciting life insurance or entering into other business enterprises.

Q. Do you know whether or not Mr. Streitwolf came here for the purpose of securing a divorce?

A. I do not.

Q. Do you know whether or not Mr. Streitwolf has obtained a divorce from his wife since he has been here?

A. I do not.

W. S. BARROWS, *Witness.*

Sworn and subscribed before me this 28th day of October, 1898.

J. H. WATTS,
Commissioner.

The further taking of depositions in this case is adjourned, by consent, until the 1st day of November, at half past ten o'clock in the forenoon, at the same place.

J. H. WATTS,
Commissioner.

The further taking of depositions in said cause was re-
101 sumed on this first day of November, A. D. 1898, at half past ten o'clock in the forenoon at the place aforesaid, in the presence of the same persons as aforesaid before me.

J. H. WATTS,
Commissioner.

R. M. TUTTLE, a witness produced on the part of said defendant, being by me first duly sworn according to law, on his oath saith, being examined by H. G. Voss, Esquire:

Q. Where do you reside?
A. Mandan, North Dakota.
Q. How long?
A. Fifteen years.
Q. What, if any official position do you hold?
A. I am court stenographer of the sixth judicial district.
Q. For how long?
A. Nine years.

Q. Are you acquainted with Mr. Streitwolf?

A. I am.

Q. Since what time have you known him?

A. I think I have known him for something over a year.

Q. State, if you know, when Mr. Streitwolf arrived in the city of Mandan?

A. He must have come here in the spring of 1897.

Q. Since that time has your acquaintance with Mr. Streitwolf been quite intimate?

A. Yes, he came into the office frequently.

Q. Since you became acquainted with him in the spring of 1897, I will ask you to state whether or not he has been a resident of this county and State?

A. He has.

Q. State whether or not it is generally understood in the community here that Mr. Streitwolf is a resident here?

Objected to as calling for the opinion of the witness, and is incompetent.

102 A. Yes, I think it is generally understood so.

Q. You say that he has been a resident here since the spring of 1897, do you know that personally, and from what is understood in the community, and yet has been engaged in business during that time?

Objected to that part of the question that relates to the understanding of the witness.

A. Yes, I always understood he was in business here.

And being cross-examined by B. W. SHAW, Esquire, the witness further saith:

Q. What time in the spring of 1897 did Mr. Streitwolf come here?

A. I could not say what part of the spring it was without looking at my books.

Q. Did Mr. Streitwolf live here continuously from the time he arrived until the present time?

A. In my judgment he did; I will explain what I mean; I know he went to Europe; he, of course, was not in this locality at that time.

Q. Was Mr. Streitwolf's absence from here for a considerable period of time?

A. During the last six months I have been in Europe myself, and cannot speak for that period, but when I left here to go to Europe he was in Europe; I have letters he wrote me; I concluded he was still a resident of Mandan; when I returned from Europe last week I found him here.

Q. Can you produce those letters from which you draw your conclusions?

A. I cannot; they were destroyed at the time.

Q. Has Mr. Streitwolf had any business here?

A. He has, and has advertised in the Mandan "Pioneer," of which I am one of the proprietors.

Q. What was the nature of the business?

A. Judging from the advertisement it was life insurance.

Q. Did he have an office or any place of business?

103 A. I thought he did; at the Inter-Ocean Hotel building.

Q. Did you ever know of his doing any business in the life insurance here?

A. No; I wasn't present when he did his soliciting, if he did any.

Q. In the little over a year that Mr. Streitwolf claims to have resided here, has he put much of his time in actually living here?

A. I didn't say a little over a year; I said eighteen months.

Q. Well, in the eighteen months that you have known him?

A. During the twelve months of the eighteen that I have been here he did; as to the other six months I cannot speak from my personal knowledge.

Q. Did you ever have any conversation with Mr. Streitwolf as to his object in coming here?

A. I think not.

Q. Has he ever stated to you his reasons for coming here?

A. He has.

Q. What was the reasons he gave?

A. The only reasons that he ever gave to me was that he liked the climate in this section of the country, and liked the country, and the longer he stayed the more he liked the people.

Q. Did he express his intention, on account of his liking for the people and climate, of making this place his permanent home?

A. No; not in so many words, but I judge from his remarks that that was his intention.

R. M. TUTTLE, *Witness.*

Sworn and subscribed before me this 1st day of November, 1898.

J. H. WATTS,
Commissioner.

104 WILLIAM C. BADGER, a witness produced on the part of said defendant, being by me first duly sworn according to law, on his oath saith, being examined by H. G. Voss, Esquire:

Q. Are you acquainted with Mr. Streitwolf?

A. Yes.

Q. How long have you known him?

A. I have known him for about a year or over perhaps.

Q. I will ask you to state whether Mr. Streitwolf during that time has been in the life-insurance business here, whether or not he has been soliciting insurance from you.

A. Mr. Streitwolf has been soliciting insurance from me; I think it was during the month of August; he was down at my place of business and solicted insurance on two different occasions.

WILLIAM C. BADGER, *Witness.*

Sworn and subscribed before me this first day of November, 1898.

J. H. WATTS,
Commissioner.

I, John H. Watts, commissioner as aforesaid, do hereby certify that the foregoing is all the evidence offered before me on behalf of either of the said parties in the above-entitled cause, and that the same was by me truly, fairly and impartially taken and reduced to writing.

J. H. WATTS,
Commissioner.

105 In Chancery of New Jersey.

Between—

ELIZABETH STREITWOLF, Complainant,
and
AUGUST STREITWOLF, Defendant.

Transcript of shorthand notes taken in above-entitled cause before his honor, Henry C. Pitney, vice-chancellor, at chancery chambers, Newark, New Jersey, Wednesday, November 16, 1898.

Appearances.

Mr. A. H. Strong, for complainant.
Mr. Willard P. Voorhees and Mr. Charles L. Corbin, for defendant.

It is understood that the case at present is to be confined to the issue raised by the supplemental bill and supplemental answer; or, in other words, to the validity of the North Dakota divorce.

AUGUST STREITWOLF, JUNIOR, called on the part of the complainant, sworn:

Q. Are you the son of August Streitwolf and Elizabeth Streitwolf?
A. I am.
106 Q. How old are you?
A. Nineteen years old last May.
Q. The only son?
A. Yes, sir.

(By the COURT:)

Q. The only child?
A. Yes, sir.

(By Mr. STRONG:)

Q. Where did you live with your parents down to August, 1896?
A. New Brunswick, New Jersey.
Q. During your whole life?
A. Yes, sir.

(By the COURT:)

Q. Your parents lived there and kept house together?
A. Yes, sir.

(By Mr. STRONG:)

Q. And you lived with them down to that time?
A. Yes, sir.
Q. Your father was in business there?
A. Yes, sir.
Q. What business?
A. Wholesale liquor business.
Q. Had been for a number of years?
A. Yes, as long as I can remember.
Q. In August, 1896, a separation occurred between your parents?
A. Yes, sir.

Mr. STRONG: I won't go into the particulars of that.

Q. And at that time with which of your parents did you go to live?
A. My mother.
Q. And where?
A. At her father's house, on Albany street, New Brunswick.

(By the COURT:)

Q. What is his name?
A. Charles Landmesser.

(By Mr. STRONG:)

Q. Is he a resident of New Brunswick?
A. Yes.
Q. And did you and your mother make your home in your grandfather's family?
A. For the time being; yes, sir.
Q. Until when?
A. Until about November of the same year we went to Jersey City, to my uncle.
Q. State your uncle's name.
A. John H. Ficken.

(By the COURT:)

Q. He married your mother's sister?
A. Yes, sir.

(By Mr. STRONG:)

Q. In what business is he engaged there?
A. Storage business, livery business, and coach business.
107 Q. And whereabouts in Jersey City did you go?
A. 14 Arlington avenue.
Q. Is that where you went to live in November, '96?
A. Yes, sir.
Q. With your mother?
A. Yes, sir.
Q. Since then where have you lived?
A. Have always lived there since then.
Q. Ever since?

A. Yes, sir.
Q. And do you yet?
A. Yes, sir.
Q. In what business or study are you engaged?
A. Law.
Q. When did you begin to study law?
A. January 14, 1897.
Q. And where?
A. In the office of H. S. Mack, 5 Beekman street, New York city.
Q. In connection with your clerkship have you been attending lectures at any law school?
A. Yes, sir; New York University law school.
Q. Are you still with Mr. Mack?
A. No, sir; I am with Goodridge, Whitney & Havens, New York city.
Q. You return to Jersey City, making your home there every night, do you?
A. Yes, sir.
Q. After the separation between your parents in August, 1896, where did your father reside or stay?
A. Well, up as far—the best of my recollection is up to November, 1896, he lived in New Brunswick, and from there he went to New York, and lived at 114 West Twenty-second street.
Q. In November you say, or about that?
A. About that time; after he left New Brunswick.

(By the COURT:)

Q. What was this 114 West Twenty-second street?
A. Boarding-house.

(By Mr. STRONG:)

Q. Did you see him at that place?
A. Yes, sir.
Q. When?
A. January 1, 1897.
Q. And did you see him there earlier than January of '97?
A. No, sir; but I knew he had been there.
108 Q. In what way did you know it?
A. No; I don't know.

(By the COURT:)

Q. Didn't you see him in the meantime?
A. No; I only seen him the 1st of January, '97, at that place.
Q. Had you seen him at other places?
A. No, sir; I hadn't spoken to him.

(By Mr. STRONG:)

Q. On the 1st of January you saw him at that address?
A. Yes, sir.
Q. And after that, do you know what he did or where he went?
A. He went to Italy.

Q. When?
A. I think it was the fourth or fifth of January; anyway, it was that week—the first week in January.

(By the COURT:)

Q. Ninety-seven?
A. Ninety-seven.
Q. How do you know he went to Italy?
A. Why, he told me——
Q. Told you?
A. I had an appointment with him that week; and I went over there, and they told me his errand; and every one had told me he had left for Italy.

(By Judge STRONG:)

Q. Well, subsequently, did he tell you anything about going to Italy?
A. No, sir——
Q. I mean after he came back?
A. Oh, yes; he brought me numerous things from Italy.

(By the COURT:)

Q. How long did he stay in Italy?
A. He told me he was in Italy till about the second week or third week in March, 1897.
Q. When did he get to New York?
A. I had a letter from him; I think it was March 27th.
Q. Written where?
A. From New York city, I think it was.

(By Mr. STRONG:)

Q. In consequence of that letter, did you see him?
A. Yes, sir; we had arranged an appointment to meet him the next day, Sunday, March 28th.
Q. Did you see him, then, on the 28th?
A. Yes, sir.
109 Q. In New York?
A. Yes, sir.
Q. Where?
A. I seen him at his boarding-house.
Q. At the place you have mentioned?
A. No. 114.

(By the COURT:)

Q. The same place?
A. Yes, sir; 114 West 23d street.

(By Mr. STRONG:)

Q. Did he refer to having been abroad?
A. Yes, sir.
Q. And you say he brought you some articles?

A. Yes, sir.
Q. Of what nature—what were they?
A. Some relics, and shells, and so forth.

(By the COURT:)

Q. Where did he say he had been?
A. To Italy, and I believe he said he was to Alexandria, Egypt—I am not positive of that.

(By Mr. STRONG:)

Q. Well, after that, did you see anything more of him?
A. Yes; I seen him again on April 3d.
Q. And where?
A. At the same place.
Q. By appointment was that, or otherwise?
A. By appointment.

(By the COURT:)

Q. What did he speak of that place as where he wanted to meet you—say whether he was living there?
A. He was living there, but he had his meals out; it was a furnished room there.
Q. Were you in his room?
A. Yes, sir; both times.

(By Mr. STRONG:)

Q. From that time—April 3d—during the month of April, did you see him a number of times?
A. Yes, he came down in the office off and on, and I went to his house, and I can't remember the exact days.
Q. When did you see him last prior to the 7th of May?
A. Well, I was over to his place.

(By the COURT:)

Q. You mean his boarding-house?
A. His boarding-house, April 30th; but between April 30th and May 7th he was at the office one noon.

(By Mr. STRONG:)

Q. That is at the office where you were studying?
A. Yes, sir.
Q. Mr. Mack's office?
A. Mr. Mack's office.

110 (By the COURT:)

Q. One noon?
A. One noon, and stayed there a very few moments.

(By Mr. VOORHEES:)

Q. You were there at his boarding-house April 30th?
A. Yes, sir.

Q. And you said between that and May 7th he was at the office once?

A. Yes, sir; at the office once, at noon.

(By Mr. STRONG:)

Q. Do you know what day that was he was at the office?

A. No, I have tried to find the exact day, but I can't fix it.

Q. After that day when he came to the office, when did you see him again?

A. Well, I went up to 114 West Twenty-second street on the 7th of May at half past six in the evening.

Q. Did you see him on that occasion?

A. No, sir; they told me that he had left for Chicago.

(By the COURT:)

Q. When?

A. On the 7th of May.

Q. The same day?

A. On the 7th of May.

Q. For Chicago?

A. Yes, sir.

(By Mr. STRONG:)

Q. What was the next that you heard from your father after that?

Mr. CORBIN: I don't know whether that is offered as evidence of a fact.

The COURT: No, but I think it was held in the famous Camden murder case that an answer of that kind is competent as part of the *res gesta*. I shall admit it, anyhow.

Q. What was the next that you heard from your father after that—after the seventh of May?

A. Twenty-third of June I received a letter from Yellowstone park.

Q. (Letter shown to witness.)

A. That is the letter.

Q. And is that the envelope (showing envelope)?

A. Yes, sir.

(Shown to the other side.)

Q. You know your father's handwriting?

A. Yes, sir.

111 Q. Is that it?

A. Yes, sir.

(Said letter offered and received in evidence and marked C 1; envelope marked C 1*a*.)

C 1 reads as follows:

"Yellowstone national park, Yellowstone Park Association.

"MAMMOTH HOT SPRINGS HOTEL, *June* 19, 1897.

"MY DEAR BOY: As you see by the heading of these lines I am

enjoying a lengthy trip through the park & *ect.* The air in these high regions is so rarefied and beneficial for sufferers of catarrh and nervous troubles and my health is greatly improving. I send you today by mail a descriptive book on the park & *ect.*, and possible I may find something else interesting to you before I return.

"Don't it strike you as me being rather fortunate to be able to see in the old world the greatest work of ancient art, the Pyramids and the temple of Karuck up the Nile, and in the new world the greatest work of nature, the Yellowstone park, all in one short year and all brought about trouble—even has his blessing in disguise.

"Now my dear boy my health is excellent comparat-ely, I am getting as brown as an Indian. I hope you are doing well and enjoying good health. I did not send you any congratulations to your birthday by mail, but our Ruler above knows I sent them to you nevertheless. My best wishes are with you at all times. I expect and hope that when I return to hear good account from you. With blessing and love to you

"I remain your father,

"AUGUST STREITWOLF."

Envelope C 1*a* addressed to August Streitwolf, Jr., 14 Arlington Ave, Jersey City, N. J., postmarked "Mammoth Hot Springs, Jun- 19, 1897; Jersey City, Jun- 23 12 m. '97."

112 (By Mr. STRONG:)

Q. Did you answer that letter?

A. Yes, sir.

Q. Directing where?

A. To Mammoth Springs hotel, Yellowstone park, Montana.

Q. The same address?

A. The same address as on the inside of the letter.

Q. Did your father ever tell you whether he received that letter or not?

A. Yes, sir.

(By the COURT:)

Q. How soon did you answer that letter of June 19, 1897?

A. I answered it the 25th, two days later than I received it.

(By Mr. STRONG:)

Q. The letter that you wrote to him was never returned to you through the post-office?

A. No.

The COURT: He said his father told him he received it.

Q. Well, tell us what was the next you knew of your father?

A. I got a letter July 24th, in which he stated——

Q. Never mind what he said——

Letter produced and shown to the other side.

Q. Is that the letter you refer to?

A. I think there was another one—yes, this was one of the letters; I didn't meet him at that time.

(By the COURT:)

Q. The question is whether that is the letter you got from him?
A. Yes, sir; this is one letter.

The COURT: Try and get them in the right order; the witness seems to think it is not the next one.

(By Mr. STRONG:)

Q. That is the letter and the envelope?
A. That is July 20, 1897; I thought I had got another one; when I said before July 24, that is a mistake.

(By the COURT, referring to letter dated July 20, '97:)

Q. That is the next one you received after the one from Yellowstone?
A. Yes, sir.
Q. That is your father's handwriting?
A. Yes, sir.
113 Q. You say you got that letter July 24th?
A. July 20th.

Said letter of July 20, '97, offered and received in evidence and marked C 2; envelope C 2*a*.

C 2 reads as follows:

"NEW YORK, *July* 20, '97.

"DEAR GUSSIE: You failed to give me your New York address. Meet me tomorrow at or about noon at the Portkeller, corner Broadway and Barkley street.

"Your affect. father, A. STREITWOLF."

Envelope, C 2*a*, addressed to August Streitwolf, Jr., care of John Ficken, 14 Arlington, Jersey City, and bearing a ten-cent special postal delivery stamp; postmarked "New York, Jul- 20; and Jersey City, N. J., Jul- 20, 10 p. m., '97."

(By Mr. STRONG, showing witness another letter:)

Q. Did you receive that from your father?
A. Yes, sir.

Last-mentioned letter, dated New York, July 22, '97, offered and received in evidence and marked C 3; envelope addressed "August Streitwolf, Jr. care of Messrs. Perkins & Butler, 38 Park row, city," and postmarked "New York, Jul- 22," marked C 3*a*.

C 3 reads:

"NEW YORK, *July* 22, '97.

"DEAR GUSSIE: Your letter received and application is satisfactory. I cannot see you Friday evening, as I intend to leave here Friday noon on a short business trip.

"Likely I will be able to see you Saturday ev'g or first part of next week. I will let you know in time & *cet.* Hoping you are in good health, I remain

"Your affect. father, A. STREITWOLF."

114 Q. That is directed to you care of Perkins & Butler?
A. Yes.
Q. What is that; a law office?
A. Yes, sir.
Q. Were you at that time with them?
A. Yes, sir.

(By the COURT:)

Q. Did you see him during that time in July in his boarding-house at all?
A. In July; no, sir.
Q. Did you see him at all—you got these two letters—did you see him at all?
A. The first one I didn't get until the next morning, and I had already left for work.
Q. Then you got this one, this next one, and the result was that you didn't see him until when?
A. I seen him the twenty-fifth.

(By Mr. STRONG, showing witness another letter:)

Q. Did you receive that letter from your father?
A. Yes, sir.

Mr. STRONG: No envelope to that.

(Said letter, dated "New York, July 23, '97," offered and received in evidence and marked C 4. Reads:

"NEW YORK, *July* 23, '97.

"DEAR GUSSIE: You can meet me at the Hoffman House rotunda Sunday morning at ten o'clock.

"Your affect. father, A. STREITWOLF.")

(By the COURT:)

Q. Received it through the mail, did you?
A. Yes, sir.
Q. About the time it bears date or shortly after?
A. No; I don't recollect just when I did receive it, but on the 24th I got it anyway; 24th of July I received it; I think it was in the morning.

(By Mr. STRONG:)

Q. Did you meet your father?
A. Yes, sir.

(By the COURT:)

Q. Where did you meet your father?
A. At the Hoffman House rotunda.

Q. Sunday morning, eh?
A. Yes, sir.
Q. That was July 24th, I suppose?
A. 25th.

115 (By Mr. STRONG:)

Q. After that did you see him again?
A. Yes, sir.

(By the COURT:)

Q. Did you learn from him where he was boarding at that time?
A. I asked him where he was boarding and he told me he was stopping with a few friends uptown.

(By Mr. STRONG:)

Q. Did he tell you where, any more definitely than that?
A. I asked him where and he didn't tell me; sort of cast it off.
Q. So that you didn't, in fact, learn where he was stopping at that time?
A. No, sir.
Q. And after that did you see him again?
A. Yes, sir.

(By the COURT:)

Q. After the 25th of July?
A. Yes, sir.

(By Mr. STRONG:)

Q. Down to what time did you see him?
A. I don't recollect whether it was the 26th or 27th—either the 26th or 27th—I seen him at half past seven, at the Hoffman house.

(By the COURT:)

Q. Evening?
A. Evening.

(By Mr. STRONG:)

Q. Did he make any statement to you on either of these occasions when you saw him in the latter part of July as to what he intended to do and where he was going?
A. He told me on the twenty-fifth that his aunt had died and had left her entire estate to him, and that he was going to Europe.

(By the COURT:)

Q. Where did he say his aunt had died?
A. Meserberg, Germany, I think.
Q. Can you spell the word that he used—the name of the town that he told you?
A. I can't spell it, but that is where she always lived.
Q. You knew before, as a matter of family knowledge, that she lived there?
A. Yes, sir.

(By Mr. STRONG:)

Q. And what was the name of the aunt?
A. Laurenroth.
Q. And what was it he said to you about her?
A. That he was going to Europe to look after his estate; that she had died on July 2d.
116 Q. After the estate that she had left him, was that it?
A. Yes, sir.
Q. You say he told you that on July 2d?
A. No; he told me that on the 25th.
Q. Did he tell you when he was going?
A. Well, I met him again on the 28th of July, at the same place and about the same time, and he had sent a telegram, he told me—he was writing it there—he said, "I am sending a telegram to my attorney to meet me on a certain steamer."

(By the COURT:)

Q. On the other side?
A. Yes, sir.
Q. On the arrival of a certain steamer?
A. Yes, sir; that he was going to sail on a certain steamer.
Q. Did he tell you the name of the steamer?
A. No, sir; he didn't tell me the steamer but he wanted me to go with him.

(By Mr. STRONG:)

Q. He asked you to go with him?
A. Yes, sir.
Q. Did you consent or not?
A. No, sir; I didn't consent.
Q. After that did you see him again?
A. Well, I had an appointment with him on the 30th; I went over——

(By the COURT:)

Q. 30th of August?
A. 30th of July; I went over there and waited until about half past eight.
Q. Where?
A. At the Hoffman house, and he didn't come; and from there I walked over to a man by the name of Mussell who had a business on 28th street, I think it was, or 27th street; and there I met his son, who said he had been out riding, and said he was there at the house at dinner.
Q. You saw whose son?
A. Mussel's son, and he said that father had been out riding.

(By Mr. STRONG:)

Q. Were the Mussels friends of your father?
A. Yes, sir; they were.

Q. You went there to look for your father?

117 A. No; I went to the business place; their house is two blocks southwest.

(By the COURT:)

Q. You went to the business place?

A. I went to the business place, and I met the son.

(By Mr. STRONG:)

Q. Well, after that did you see your father at all?

A. No, sir; I never seen him. I didn't go to the house; from there I went home.

Q. When you last saw him it was the 28th, wasn't it?

A. Yes, sir.

Q. Did you bid him good-bye as if he was going to Europe, or not?

A. Yes, sir; I had made an appointment with him. I was to give him a definite answer on the 30th of July; give him a certain definite answer.

Q. Then you expected to see him again after the twenty-eighth?

A. Yes, sir.

Q. Did you receive any word from him after the twenty-eighth of July—any communication?

A. Well, I received a letter, but I think it was August 14th, from Mandan, North Dakota.

Q. (Showing witness letter and envelope.) Now then, do you recognize that letter and envelope?

A. Yes, sir.

Q. Is that the letter and the envelope which you have just referred to?

A. Yes, sir.

Q. Received you said when?

A. August 14th, I think.

Said letter, dated "Inter-Ocean hotel, Mandan, N. D., Aug. 11th, 1897," offered and received in evidence and marked Exhibit C 5; envelope postmarked Aug. 11, addressed: "August Streitwolf, Jr., 14 Arlington Ave., Jersey City, N. J.," marked Exhibit C 5*a*.

C 5 reads as follows:

118 "INTER-OCEAN HOTEL,
"MANDAN, N. D., *Aug. 11th*, 1897.

"MY DEAR BOY: I suppose you have tought my action and conduct towards a little strange in some ways of late. Well my dear boy the time has come when this explains itself.

"It is now even one year when your mother foolishly set about to ruin me & cet & cet and when I lay in my bed nights and recall the sad incidents and harrasing trials and tribulation I had to untergo I wonder at myself that I am a life at all. But there is a good Ruler above us, and many a time I have adressed him for strength and guidance and I am sure my appeals where granted, because I am

comparetly well and strong to day only a few months ago wrecked in ambition and health nothing to seek for but rest and—satisfaction.

"I am real sorrow that your mother foolishly refused her own proposition of a settlement, nor more trouble more annoyance particular for her, mine is over. I feel I done my duty as far as I could. After I had plainly told her in your presence and others what the result would be, and how I heated to follow such a course and only would after giving her another chance. I told open and above board then and to you privately every part of the case against her and how much would I have been pleased and in fact apparently I and you were pleased and how we where fooled. The why and wherefore? I don't know I suppose it was'n necessary to give any explanation. Well everything must have an end and I am determinated to have it ended, if not in a decant quiet way, then let the court and the world if you please know all the scandal if so desired. All that could be said against me privately and publicly has been said I never replied with one word at least not in the press, and I will not now give one item to the press alone on your account if no others.

119 "Your mother I feel more than sorrow for, because I hold her less to blame being more the tool of fools advisers. I use the term fools another stronger one would be more approbiated—but her temper and self-will is beyon control and such a woman is not fit to live with any man, or any one else in peace.

"I also and more feel sorrow for you but cheer up these trials in your young days may possibly make happier ones for your later ones, or not to be misunderstood I mean in your later years of life. Your young and strong and every one has to have these trials sooner or later this seems to be the fate of humanity. Remember the last words I said to you leaving you at the 23 Street Elevated station, it was my good-bye to you that night for a long time to come.

"As for myself I put on a smiling face to the world now and then I find relief in a few tears and a few words to some confiding friend and I feel better able again to battle with life anew.

"And now my dear boy write to me at your earliest convenience, there is no more trouble about sending your letters direct here, box 86, or even my name is sufficient. I have managed to make myself quite popular here among these plain people where clothes amount for nothing, and received quite a warm wellcome from the people on my return here. Well I have been living very quiet life here all this time with the exception of the trip trough Yellowstone and the climate and its bracing air agree splendidly with me I sleep better and more refreshing than I remember to have for years.

"The matter about the aunt inheritance I settled by appointing Adolp Kotte my attorney and instructed him how to act.

"I hapen to think that I received a bill here from Mr. Welde City hotel, N. B. increased from $20.00 to $35. I never pay this bill nor to will I hear any more of it for Mr. Welde's own good and others.

120 "I am tired to being robbed and bled because some one acted life a — fool.

"With love to you my boy

"I remain your father

"AUGUST STREITWOLF."

Q. Up to the receipt of that letter had you any information of your father being or having been at any time in Mandan, North Dakota?

A. No, sir.

Q. Or in North Dakota at all?

A. No, sir.

Q. Where did you suppose your father to be up to that time?

A. Yellowstone park; before I had met him on July 25th.

Objected to as immaterial.

The COURT: He was on friendly terms with his father and had numerous interviews with him, and may have some bearing on the case. I would not want to rule it out anyhow. You may ask him if he had any reason to suppose up to that time from anything said by his father, or from what his father had written to him, that his father had been at Mandan. That is about the same thing.

(By the COURT:)

Q. Just answer that: had you up to the time you received that letter, any information or supposition that your father had been at Mandan?

A. No, sir.

Q. Had you received any other letters from him besides those that you had given us here?

A. From North Dakota?

Q. From anywhere, in that time?

A. No, sir.

(By Mr. STRONG:)

Q. Do I understand you that you understood him to be at Yellowstone at that time?

A. Prior to July 25th.

Q. But following your seeing him in New York in the latter part of July?

A. Yes, sir; I thought he had gone to Europe.

121 Q. In consequence of the statements that he had made?

A. Yes, sir.

Q. Did you answer this letter?

A. No, sir.

Q. This last letter that I showed you, C 5?

A. No, sir; I did not.

Q. Did you know of your mother receiving a copy of summons and complaint here in New Jersey, at Jersey City?

A. Yes, sir.

Q. Soon after that?

A. Yes, sir.

Q. How soon after that was it?
A. I think it was August 17th.

(By the COURT:)

Q. Shortly after you received that letter?
A. Shortly after.

(By Mr. STRONG:)

Q. The letter you said you received on the 14th?
A. Yes, sir.
Q. Did you receive a further letter from your father from Mandan?
A. Yes, sir; August 28th I think I received it.
Q. (Showing witness letter and envelope.) Just identify that.
A. Yes, sir.

Letter dated Inter-Ocean hotel, Mandan, N. D. Aug. 23, 1897, offered and received in evidence and marked C 6; envelope addressed "August Streitwolf, Jr., 14 Arlington Ave., Jersey City, N. J." postmarked Aug. 23, marked C 6a.

C 6 reads as follows:

"INTER-OCEAN HOTEL, MANDAN, N. D., *Aug.* 23, 1897.

"DEAR GUSSIE: I have failed to receive any reply from you to my letter of the 12" instant.

"I shall insist on having a clear understanding in this matter and expect you to tell the truth only, on subjects I talked over with you personally and you well know. You will remember how a year ago you was more than anxious to tell anything possible and im-
122 possible against me, this I forgave you; but should you act false again I shall hold you to strict account for it and treat you accordingly.

"You please will answer now without delay and understand no answer is an answer to.

"Your father. AUGUST STREITWOLF."

Q. Did you answer this letter of August 23d?
A. No, sir.
Q. Have you had any meeting or communication with your father since that?
A. No, sir; I have not.
Q. (Another letter shown witness, and envelope.) Is that in your father's handwriting; look at the enclosure—letter and envelope?
A. Yes, sir.
Q. Did you receive it?
A. No, sir.
Q. No, it is addressed to your mother; do you know of your receiving it?
A. Yes, sir; I do.
Q. At what time?
A. I think it was either October 9th or the 10th.
Q. You knew of it at that time, did you?
A. Yes, sir.

Q. Your father's handwriting, you say?
A. Yes, sir.
Q. All of the letters that I have shown you were in your father's handwriting, were they?
A. Yes, sir.

(By the COURT, referring to letter not yet marked:)

Q. Was not anything else when you got it than that?
A. It was addressed to my mother.

(By Mr. STRONG:)

Q. Is that all there was of it?
A. Yes, sir.

(By the COURT:)

Q. That is your mother's maiden name?
A. Yes, sir.

(Said paper, without date, offered and received in evidence and marked C 7.; envelope addressed "Miss Lizzie Landmesser, 14 Arlington Ave. Jersey City, N. J." marked C 7*a*.

123 C 7 reads as follows:

"HOTEL METROPOLE,
"FARGO, NORTH DAKOTA, —— —, 189–.

"Leave it to me and you fair well. Driven I will not be. Your advisers are your bitterest enemies if you only know it.
"April, 1897."

C 7*a* postmarked "Oct. 6, 1897" also "Jersey City, N. J., Oct. 9, 7.30 a. m., '97, rec'd.")

(By Mr. STRONG:)

Q. That you said was received in October—Oct. 9th or 10th, 1897?
A. Yes, sir.
Q. I notice at the bottom of the letter, Exhibit C 7, the words "April, 1897"—do you know to what that refers?
A. I presume it meant April fool; the best I can make out.
Q. Was there any communication or effort at a settlement between your father and mother in April, 1897?
A. Yes, sir; there was a couple of propositions for settlement.
Q. With a view to a separate maintenance?
A. Yes, sir.
Q. (Handing witness printed slip, afterwards marked as C 8.) Do you know anything about that?
A. Yes, sir.
Q. What?
A. An advertisement of Hoggatt & Caruthers.
Q. Where did you get it?
A. Last Sunday's Herald.
Q. Cut it out yourself?
A. Yes, sir.

Q. Have you seen that same advertisement in there for a long period before?

A. Yes, sir.

Q. The New York Herald?

A. Yes, sir.

Mr. CORBIN: It is clearly incompetent.

The COURT: It won't make much difference whether I receive it in evidence or not, because on appeal from me if the court thought it was competent they would receive it. I will determine the question of admissibility at the final hearing. It may be marked now. I shall consider it or not as I think best at the end of the case.

124 (Said printed slip marked C 8, and reads as follows:

"DAKOTA DIVORCES.—An absolute divorce may be obtained in North Dakota upon a residence there for a period of 90 days. Hoggatt & Caruthers, of North Dakota. Offices, 256 Broadway, New York.")

Cross-examination by Mr. VOORHEES:

Q. You say the separation between your father and mother occurred in August, 1896?

A. Yes, sir.

Q. Where did you live after that?

A. I lived at my grandfather's, in New Brunswick.

Q. For how long?

A. Till November of that same year.

Q. Where did you go then?

A. I went to Jersey City, to my uncle.

Q. And you lived there continuously?

A. Yes, sir.

Q. In Jersey City?

A. Yes, sir.

Q. Were you placed at school by the chancellor at Hightstown?

A. Yes, sir.

Q. When was that?

A. That was in November—I think it was November 11, 1896—anyway it was a week before Thanksgiving when I went to Hightstown.

Q. Then you didn't go from your grandfather's to Jersey City?

A. Well, I was there; and I was in Brunswick, and from there went to Hightstown, but I was only there practically a month. I was at Hightstown a month.

Q. How did you come to leave Hightstown?

Objected to.

The COURT: I don't know under what circumstances he was placed there.

Mr. VOORHEES: The order of the court shows.

The COURT: Was there an application to the court made for the support of this boy?

125 Mr. VOORHEES: Yes, sir; the court ordered the boy to go to Hightstown, and the father to pay the expense.

Mr. STRONG: An application really for the custody of the boy by the father, and the chancellor disposed of it in that way.

The COURT: The father applied for the custody of the son by petition?

Mr. VOORHEES: By petition; and he was sent to the Peddie Institute.

(By the COURT:)

Q. There is no reason why he should not state why he left there; answer the question.

A. Why, I went down to the principal one morning and he told me——

Q. Oh, you needn't give the details of it.

A. He told me that he didn't think he could have me in the school any longer.

(By Mr. VOORHEES:)

Q. Then you went to Jersey City?

A. Yes, sir.

Q. You were a witness against your father in the proceedings for alimony, were you not?

A. Yes, sir.

Q. Did you make an affidavit to the petition for alimony?

A. I believe so.

Q. And subsequent affidavits also?

A. I don't remember.

Q. Will you look at that, please (handing witness printed matter); do you know what that is?

A. Yes, sir.

Q. Did you cause that to be published in one of the newspapers in New Brunswick?

A. Yes, sir.

Mr. STRONG: I don't see in what aspect it is admissible or what relevancy it has.

The COURT: I shall admit it; simply shows the feeling of the boy.

Said printed matter, under date of October 9, 1897, signed August Streitwolf, Jr., and addressed to the editor of the Home News, marked D 1.

126 Q. You spoke of a settlement between your father——

The COURT: No, he said there were negotiations for a settlement in April, 1897.

Mr. VOORHEES: I want to show with some accuracy the date when those negotiations failed; that is all I want to show.

Q. Can you give me the date when they were ended; when they were given up?

A. I can't give you the exact date, but between April 30th and May 7th he came to the office, and he says "You will not settle; you will suffer."

(By the COURT:)

Q. If you will not settle you will suffer?
A. You will not settle, and you will suffer.

(By Mr. VOORHEES:)

Q. Then it was before that negotiations had been broken off, was it?

A. Yes, sir; I should judge that the last proposition I had submitted to me to give mother or counsel was April 30th, I think that was the last time; I can't give you the exact date; I think it was then.

Q. (Showing witness paper.) Will you look at that letter?
A. (Witness looks at the paper.)

Paper shown to the other side, who say they have no objection to make.

Said letter, dated New York city, April 15, 1897, signed August Streitwolf, Jr., and addressed to W. P. Voorhees, offered and received in evidence and marked D 2.

Q. The negotiations referred to this settlement?
A. Yes, sir; this letter referred to that.
Q. That is all.

127 JACOB A. STROH called on the part of the complainant and sworn.

Direct examination by Mr. STRONG:

Q. Where do you reside?
A. I reside at 397 Sixth avenue, New York.
Q. And are you in business there?
A. I am in business there; the restaurant business.
Q. You know August Streitwolf, the defendant in this case?
A. I do.
Q. And his wife?
A. Yes, sir.
Q. How long have you known them?
A. Oh, I should say about eighteen or twenty years.
Q. Have you known August Streitwolf during that time intimately?
A. Quite so; yes, sir.
Q. In the spring of 1897 down to the seventh of May did you see him quite frequently?
A. I did.
Q. Where?
A. At my place of business, and also at his boarding-house.
Q. Where was his boarding-house?
A. 114 West 22d street.
Q. And did he take his meals at your place?
A. Yes, sir.
Q. How frequently?

A. Well, some days he would be in once a day, and other days perhaps twice, and sometimes perhaps three times *times* a day.

Q. Was he there every day once or oftener?

A. More or less; yes, sir.

Q. During what period would you say that covered?

A. Well, I should say it was two months prior to the seventh of May of that year.

(By the COURT:)

Q. How do you fix the seventh of May?

A. I owed Mr. Streitwolf a bill, and he had eaten with us, and I paid part of his bill by his eating with us; and on the seventh of May we settled up entirely; I gave him a check for what balance was coming to him, and he left.

128 Q. And you have the check, I suppose, to fix the date?

A. Yes, sir.

(By Mr. STRONG:)

Q. Did you bring the check with you?

A. No, sir, but I can swear to the date, because I put it right down in the book when I paid the check, and it was on the seventh of May; I looked over the book before I came here.

Q. You can bring us that check?

A. Yes, sir.

Q. How long would it take you to get the check and bring it here?

The COURT: If necessary, I will let him do that later.

Q. You have recently refreshed your memory as to the date?

A. Last night.

Q. By the book?

A. Yes, sir.

Q. And the entry in the book was made at that time?

A. May 7th.

Q. Are you positive then that you saw August Streitwolf in your place in the city of New York on the 7th of May, 1897?

A. Positive, yes.

Q. What did he say to you on that occasion as to his future movements, what he intended to do?

A. All I remember is that he at the time told me that he expected to go to Yellowstone park with a party of gentlemen, and from there take a trip to Europe, and I supposed he had gone there; I don't know anything further about it; I didn't see him again after the 7th of May.

Q. You didn't see him again until when?

A. I have seen him out in the street; until three months ago I hadn't seen him to be close to him in any shape.

Q. Did he ever say anything to you in reference to his intention to locate in North Dakota?

A. No, sir.

Q. Did he ever speak of his intention of removing to any place in the West to live?

A. No, sir; not to me.

Cross-examination by Mr. VOORHEES:

Q. How long is it since you have had any conversation with Mr. Streitwolf?

129 A. Well, it must have been the 7th of May, because I don't recollect speaking to him again since, except to bid him good day at the barber shop some three months ago when I went in there; don't recollect having had any conversation with him since then.

Q. Were you on good terms with him when he left?

A. I am today; never had any trouble.

(By the COURT:)

Q. Never had any trouble with him?

A. I am just as much friendly to one as I am to the other.

(By Mr. VOORHEES:)

Q. Do you know where the negotiations for a settlement took place?

A. I don't know that there was any except in my own dwelling one Sunday when they were there.

Q. Both of them?

A. Yes, sir; and we tried to make peace between them.

(By the COURT:)

Q. That is all you know about it?

A. Yes, sir.

Q. Was that before this May 7th?

A. Oh, yes; it must have been three or four weeks before May 7, it seems to me.

(By Mr. VOORHEES:)

Q. Before when?

A. Before the 7th of May.

Q. They were one Sunday in your house?

A. Yes, sir.

Q. Did you take Mrs. Streitwolf to see him about settlement?

A. No, sir; they came there.

Q. At his house?

A. At my house.

Q. Did you, before that, take her over to his room?

A. No, sir; not that day.

Q. You had before that done so?

A. No, sir; I think after that I did take her over to his house; it was after the Sunday they had been to my house trying to come to some settlement; she came to my house after that; and then I took her over to 114 West 22d street; I went there with her; yes, sir.

(By the COURT:)

Q. Was he in then?

A. Yes, sir.

Q. And you had to do with two interviews?

130 A. Well, I simply came there with her, and after we got talking together for a time I went off; I didn't bother about it; I didn't attempt to make any arrangement or settlement between them or anything of that kind.

(By Mr. VOORHEES:)

Q. Now, I want you to tell me how you fix the 7th of May.

The COURT: The better way is to have him send his check and his book over, or to bring them.

Q. The only way I fix it is I looked at the book, and made it a point to look over my cash book, and found a charge of forty-five dollars and some cents, a balance due to Mr. Streitwolf, and I paid him, and must have given him a check for it.

Q. And you paid him?

A. Yes, sir; it is entered in my book as paid; I must have given him a check for it.

Q. Did you owe him money?

A. Yes, sir; forty-five dollars and some odd cents, I think it was.

Q. Which you paid him?

A. Yes, sir.

Q. Where did you deliver that check to Mr. Streitwolf?

A. Right there and then in my place of business.

Q. Was the check dated the same day you delivered it to him—did it bear date the same day you delivered it to him?

A. That I would not swear to now, but I am quite sure I did; I don't know why I should enter it in my book if it was paid on any other day.

Q. Did you keep a check book?

A. Yes, sir; I think I have the check.

The COURT: It may turn out that he paid cash.

The WITNESS: No; if I paid cash I should not have entered it in that book, because I have a cash book; that book I use exclusively for my checks that I use.

(By Mr. VOORHEES:)

Q. I mean to say do you keep a check book from which you tear out your checks?

A. Oh yes, sir; certainly.

Q. Stubs?

A. Yes, sir.

131 Q. Was this one of those checks?

A. Must have been.

(By the COURT:)

Q. Did you see it on the stub?

A. I did not see it on the stub; I saw it on another book that I keep my cash account in with the bank.

Q. Then this was charged to the bank on that day?

A. Yes, sir.

(By Mr. VOORHEES:)

Q. Do you remember what day of the week it was?
A. That I don't remember now.

(Witness leaves with the understanding that he is to return with the check and any other memoranda he can find.)

At this point the depositions taken in Mandan on the part of complainant and defendant read by counsel, and received in evidence.

AMY K. BLOOM, called on the part of the complainant, and sworn.

Direct examination by Mr. STRONG:

Q. Where do you live?
A. 1500 Third avenue, New York city.
Q. You are a married woman?
A. Yes, sir.
Q. Does your husband live there?
A. No, sir.
Q. Were you ever in Mandan, North Dakota?
A. I were.
Q. When were you there?
A. I arrived there on the 23d of September, 1897.
Q. For what purpose did you go there?
A. To see my husband.
Q. And what else was there going on there that attracted you there?
A. Well, he applied for his divorce.

(By the COURT:)

Q. Your husband?
A. Yes, sir; he was out there.

132 (By Mr. STRONG:)

Q. Where?
A. In Mandan, North Dakota.

(By the COURT:)

Q. Your husband sued you for divorce?
A. He applied for his divorce; yes, sir.

(By Mr. STRONG:)

Q. And you went on there; where did you go from?
A. From Omaha, Nebraska.

(By the COURT:)

Q. You had had a home in Nebreska at that time?
A. Yes, sir.

(By Mr. STRONG:)

Q. And you went to Mandan on account of this proceeding that was going on there?
A. Yes, sir.
Q. How long did you stay there in Mandan?
A. Well, I stayed there till the term of court closed, about 18th of November.
Q. And was your husband there at that time?
A. No, my husband left the 14th of October.
Q. How large a place is Mandan?
A. It is a very small village.

(By the COURT:)

Q. What do you mean by very small?
A. Just on one side of the street; there is a post-office; and a bank, a couple of grocery stores and a barber shop; and across the street there is a depot, a little bit of a small depot, and one schoolhouse.

(By Mr. STRONG:)

Q. Is it a business place; any large business carried on there?
A. No, sir.
Q. Any factories there?
A. Only a mill factory.
Q. What is that?
A. Wheat.

(By the COURT:)

Q. To grind the grain
A. Yes, sir.

(By Mr. STRONG:)

Q. Flour mill?
A. Yes, sir.
Q. Is that a large factory or not?
A. Yes, that is a good-size factory.
Q. Can you give us any idea of how many inhabitants there are in that place?
A. Well, there ain't many.

(By the COURT:)

Q. Didn't you learn while you were there how much the population was?
133 A. On one side of the street—there ain't so very many; there is very few.
Q. How long is the street?
A. In half an hour you can go all over the place.

(By Mr. STRONG:)

Q. Was Mr. Streitwolf there at that time?
A. He was not there when I arrived.

Q. That was the twenty-third of September, did you say?
A. Twenty-third of September I arrived; he was not there then.

(By the COURT:)

Q. How do you know he was not there?
A. Well, you can tell who is in a little bit of a place; and you can tell when one leaves the place; and they take the train.
Q. See them coming and going?
A. Yes; and only one train leaves there, and that is in the evening.

(By Mr. STRONG:)

Q. One train a day?
A. One train a day.

(By the COURT:)

Q. One train through from the Pacific coast?
A. One train arrives there in the morning, and then it leaves again in the night, about a quarter to eleven, or a little after.
Q. But there is a train through from the West?
A. Yes, sir.
Q. And a train goes from there south——
A. From Mandan it goes to Dickinson.

(By Mr. STRONG:)

Q. You say the trains run only once a day each way?
A. That is the way I understand.

(By the COURT:)

Q. Not many trains anyhow?
A. No.

(By Mr. STRONG:)

Q. Is there more than one railroad?
A. Only a freight train that runs.
Q. Is there more than one railroad there?
A. I don't think so.
Q. You say Streitwolf was not there when you came there; did you see him there afterwards?
A. I heard that he was there afterwards, in October.

134 (By the COURT:)

Q. Did you hear of his being there when you first got there?
A. No, sir; he was not there when I first got there.

(By Mr. STRONG:)

Q. The first you heard of his being there was in October?
A. Yes, sir.
Q. Do you know what time in October?
A. He just came there the day before his decree was granted to him.

Q. How did you know that?
A. Well, I heard it at Mrs. Smith's place.
Q. What is Mrs. Smith's place?
A. She keeps boarders.
Q. Was that where you boarded?
A. No, sir.
Q. Was that where Streitwolf boarded, do you know?
A. He took his meals there after he came back.

(By the COURT:)

Q. Took his meals there, eh?
A. He took his meals there and had a room at the Inter-Ocean hotel.

(By Mr. STRONG:)

Q. That is in October?
A. In October.
Q. Your husband was there in Mandan some part of the time, was he?
A. Yes, sir; my husband was there in the spring.
Q. (Showing witness cabinet-size photograph of four individuals.)
A. Yes, sir; he is my husband (pointing to one of the figures).
Q. Is your husband in that picture?
A. Yes, sir.
Q. Which one is your husband?
A. This one right here.

(By the COURT:)

Q. In the middle?
A. In the middle.

(By Mr. STRONG:)

Q. The one sitting down holding something in his hand.
—. ——.
Q. And the other gentleman is who?
A. Mr. Streitwolf.
Q. And the ladies, do you know them?
A. One is Mr. Streitwolf and the other is Mr. Bloom.
135 Q. I mean the ladies.
A. No, sir; I didn't see the ladies.
Q. Do you know where that was taken?
A. I know where it was taken.
Q. How do you know?
A. I was there at the place.

(By the COURT:)

Q. Gilbert's, at Mandan, eh?
A. Yes, sir.

(By Mr. STRONG:)

Q. Where did you get it?

A. I bought a couple of pictures from there.
Q. From where?
A. From the place where they were taken.
Q. Gilbert's at Mandan?
A. Yes, sir.
Q. From the photographer, Gilbert, at Mandan?
A. Well, the name *name* shows there.

(By the COURT:)

Q. Did you get that picture there yourself?
A. I did.

(By Mr. STRONG:)

Q. What date did you buy it?
A. After my husband left in October—the last part of October.
Q. '97.
A. Yes, sir.

Photograph offered in evidence. Objected to.

The COURT: I can't exclude it; it may have very little bearing on the case.

Said photograph marked C 9.

At this point the defendant offers in evidence the enrolled proceedings for divorce, decree, &c., in North Dakota court, exemplified under act of Congress; marked D 2.

Mr. VOORHEES: Also offer the Statutes of North Dakota, published by the authority of the assembly—1895——

The COURT: Just read the part that you rely on, if it is not too long.

136 Mr. VOORHEES: The substance of this is all set out in the answer to the supplemental bill.

Mr. STRONG: I think so.

Mr. VOORHEES: I am willing to consider the statutes set out in the answer as offered from this book.

Counsel so agree.

Afternoon session.

WALTER L. BUNNELL, called on the part of the complainant and sworn.

Direct examination by Mr. STRONG:

Q. Where do you live.
A. 317 West 136th street, New York city.
Q. And your business is what?
A. Lawyer; member of the New York bar.
Q. In September, 1897, were you practicing in New York city?
A. I was.
Q. Did you make any effort to serve the injunction in this cause of Streitwolf *v.* Streitwolf on Hoggatt & Caruthers?
A. I did.
Q. State what you did in reference to that.

A. I went to the office of Messrs. Hoggatt & Caruthers and asked if——

Q. When was it, please?

A. This was on the 15th of September, 1897; I went to the office of Messrs. Hoggatt and Caruthers and asked if either one of the firm was in—if any one of the firm was in.

Q. Where was the office that you went to?

A. Well, I can't give you the number; it is the St. Paul building; it is known as the St. Paul building, in New York, rather than by the number.

137 Q. And about what street?

A. On the corner of Ann street and Park row.

Q. Do you know that you went to the office of Hoggatt & Caruthers?

A. I do.

Q. How do you know it to be their office?

A. Because I not only saw the sign on the door "Hoggatt & Caruthers, attorneys," but when I went in I asked if this was the office of Hoggatt & Caruthers.

Q. Who did you see?

A. I saw first a Mr. J. F. O'Donald.

Q. How did you know that to be his name; were you acquainted with him?

A. No, sir; I asked him his name, and he gave me that as his name.

Q. And was he in charge of the office?

A. He was in charge of the office.

Q. What conversation did you have with him?

A. I asked him if he was a member of the firm of Hoggatt & Caruthers, and he said that he was, but that he had nothing to do with the business in the East; that his connection with the firm was with the business of the West.

Q. What further did you do then?

A. Well, I asked him again if he was a member of the firm, and he said yes; I then went away and communicated with Mr. August Streitwolf, Jr., as to what my efforts had been, and he told me that I had better——

Q. Never mind that.

A. Well, I went back to the office again, and caught Mr. O'Donald as he was going out; but he went back in the office with me, and I said You are a member of the firm, and he said Yes. Then I will serve this paper on you; and he looked at it and said "I am not a member of the firm sufficient to receive this."

Q. What paper did you give him?

A. A certified copy of the injunction order.

Q. Did you hand it to him?

A. I handed it to him.

Q. You mean the writ or the order?

A. Well, it was a certified copy of the injunction.

138 Q. I show you the original writ; you can tell by looking at it whether that is what you refer to.

A. This is it.
Q. A certified copy of the writ?
A. Of the writ.
Q. Did you leave it?
A. I left it with Mr. O'Donald.
Q. He was then in charge of the office?
A. Yes, sir.
Q. Did you inquire for Hoggatt & Caruthers themselves?
A. I inquired for both of them, and each of them separately, and this gentleman told me that neither of them would be in town until the following week; and as that would be too late to serve an injunction I gave it to him.
Q. And left it with him?
A. And left it with him.
Q. At that time did you see him have any papers that you noticed?
A. The papers in the suit of Streitwolf *v.* Streitwolf were on the table in front of him, but whether they were in the one suit or the other I can't tell.
Q. That is, in the New Jersey suit or the Dakota suit?
A. Whether they were in the New Jersey suit or the Dakota suit I could not tell.
Q. Did you see the name?
A. I saw "Streitwolf *v.* Streitwolf" on the papers.
Q. You made an affidavit of service which was attached to the return of the writ?
A. I did.
Q. I notice in your affidavit annexed to the writ you state that was on the 13th of September; are you positive as to the date?
A. I am positive as to that for this reason; I didn't receive the paper to serve until the 14th; and consequently I could not have served it on the 13th; and it should be the 15th; it was the 15th it was served anyway.
Q. That is the affidavit that you returned with the writ?
A. That is the affidavit; that is my signature.

139 Cross-examination by Mr. VOORHEES:

Q. Did you receive word from Mr. O'Donald that Mr. Hoggatt and Mr. Caruthers were absent that day?
A. I did.
Q. How did you come to make that affidavit that this service was made on the 13th?
A. I can explain it in no way except that it was a mistake of the typewriter; I knew that it was sworn to on the same day that it was served, because my brother took the affidavit; or rather, I don't know whether that one that was on file was or not—but the original one was. That is the second one that was made later, not being in conformity with the forms of New Jersey.

Redirect by Mr. STRONG:

Q. By way of explaining that: you said that you had made previously a typewritten affidavit?

A. I did.

Q. And what did you do with that?

A. I gave it to Mr. August Streitwolf, Jr., and shortly after that he came to me again with another affidavit which I was informed was an exact copy of the one I had already made; I simply read it over and swore to it; and that (referring to paper afterwards marked C 10) is really the affidavit which I made at the time, typewritten and sworn to on the fifteenth day of September.

Q. This one that you now have in your hands?

A. Yes, sir.

Q. That one annexed to the writ?

A. The one annexed to the writ was sworn to later; how much later I don't know.

Q. In this affidavit which you made at first (referring to paper afterwards marked C 10) what was the date given?

A. The date was the 13th; I changed it to the 15th myself here this morning.

(By the COURT:)

Q. In the original affidavit?

A. No, in this copy; the one that was not used at all.

140 (By Mr. STRONG:)

Q. That copy was sent in first, and from that an affidavit in due form was prepared for filing with the writ, and in that copy the 13th was mentioned?

A. Yes, sir.

(By the COURT:)

Q. What do you say now was the date of service?

A. 15th of September, 1897.

Mr. STRONG: I suppose I may as well offer this affidavit that was first made by way of explanation; it is the affidavit that he made at first of the service, and it was sent to me, and in it was contained the 13th of September; and I had an affidavit prepared in a little different form for the purpose of returning it with the writ, and took the 13th to be the date, and sent the paper to him, and he swore to it without observing that the 13th was a mistake for the 15th.

The COURT: You may put it in.

Said original affidavit offered in evidence and marked C 10.

Mr. STRONG: I find I made an affidavit, attached to the writ, of delivery to you of a copy of the injunction. Do you want me to prove that, Mr. Voorhees?

Mr. Voorhees admits that he had a certified copy of the injunction under the seal of the court exhibited to him on the fifteenth day of September, 1897, and that he read it and observed its contents.

Complainant rests.

AUGUST STREITWOLF, the defendant, called in his own behalf and sworn:

Direct examination by Mr. VOORHEES:

Q. You are the defendant in this suit?
A. Yes, sir.
Q. You were married to the complainant when?
141 A. Third of June, 1876.
Q. And you lived with her up to what time?
A. Up to the third of August, 1896; Monday, August 3d, 1896.
Q. What occurred then—without going into the details?

(By the COURT:)

Q. You separated?
A. No; Missis deserted that evening.
Q. She left you?
A. Yes, sir.

(By Mr. VOORHEES:)

Q. Where were you living at the time of this leaving of you?
A. New Brunswick, New Jersey.
Q. And whereabouts in New Brunswick?
A. 295 Burnet street.
Q. And tell me about 295 Burnet street, the building, and what it was used for?
A. The lower floor was a wholesale liquor store, and the upper part was private apartments in which we resided ever since the house was built.
Q. Your dwelling?
A. Yes, sir.
Q. How long have you lived there?
A. Ever since 1890.
Q. How long did you remain in that place after your wife left?
A. I remained in until November of the same year.
Q. What happened then?
A. I sold the business. I was obliged to sell the business; sold it to the firm of Becker & Tietjen; I was forced to sell because I (interrupted)——

Objected to.

The COURT: Under the present issue I think it makes no difference who he sold to.

Q. And what about the dwelling-house?
A. Rented the whole building.
Q. Rented the building?
A. Yes, sir.
Q. And sold out your business?
A. Rented and leased it.
142 Q. What happened then?
A. I then left for New York; left the State and went to New York.

Q. Did you take up your residence in New York at that time?
A. I did.
Q. Where did you go?
A. 22d street—New York—114 I believe is the number; I am not positive about the number; 22d street, near Sixth avenue.
Q. What became of the furniture in that house?
A. Was leased also.
Q. Leased to Becker & Tietjen?
A. Yes, sir.
Q. How long did you stay in New York?
A. I stayed in New York until the 6th day of May, 1897.
Q. Did you go away from the city of New York between November, '96, and May, '97?
A. I did.
Q. Where did you go?
A. Egypt.
Q. Where did you go then?

Objected to as immaterial.

Q. You came back from Egypt when?
A. In March, '97.
Q. And where did you go when you arrived?
A. Back to my room; I kept my room right along.
Q. You kept your room in New York?
A. Yes, sir; clothing there, and everything there; I went back to the same room which I had occupied.
Q. What was the state of your health at the time when you went to Egypt?
A. Very poorly.
Q. What has been your health for several years last past?
A. Very poor; suffered from nervous prostration and gastritis.
Q. Have you ever had pneumonia?
A. Twice.
Q. Were you under any treatment while you were abroad?
A. Yes, sir.
Q. Where?
A. Why, the very day the steamer left I was taken in charge by the doctor and conveyed to the doctor's room, and remained in his room until the steamer reached Alexandria; and in Cairo I
143 was taken in charge by another physician; in fact, I have had physicians pretty much wherever I have been.

(By the COURT:)

Q. Were you not in Italy?
A. In Italy only coming back; a couple of days.

(By Mr. VOORHEES:)

Q. Where did you go from Cairo?
A. Took the steamer up the Nile.
The COURT: Is that of any consequence?
Q. Well, in coming back?

A. In coming back I came by the way of Brindisi and Naples back here.

Q. Did you stop in Italy?

A. Not longer than was necessary to make the connection on the steamer, from one steamer to another.

Q. Now, when you arrived in New York you said you went back to your old rooms; did you see your wife then?

A. Returning from Egypt I learned that my wife had expressed great anxiety to make up; I met her at a friend's house, at Mr. Strok's home; she told me——

Objected to.

The COURT: You may show that negotiations were going on; that is all.

Q. Did those negotiations terminate in anything definite?

A. Yes, sir.

Objected to.

WITNESS: Yes, sir.

The COURT: Have you pleaded a settlement?

Mr. VOORHEES: We have pleaded that there was a settlement agreed upon and then the wife refused to carry it through.

Mr. STRONG: So that practically it amounts to nothing. He contends that they reached an agreement, and she contends that they did not.

The COURT: Nothing in writing?

Mr. VOORHEES: No, sir.

144 The COURT: You can't show which was to blame for it at this time.

Mr. VOORHEES: This is an inquiry into a man's residence; and the fact that those negotiations were broken off after he understood they were concluded may be a very powerful motive in this man for going away.

The COURT: I can assume that if you choose to put it in that shape.

Mr. VOORHEES: Very well.

The COURT: I think that appears plain enough, that he might have had a powerful motive.

Q. Now, you left New York when, and where did you go?

A. I left New York on Thursday, the sixth day of May, by the Lehigh Valley railroad, and went to Dakota.

Q. Mr. Stroh has testified here that you had a settlement with him in person; when did you have your settlement with Mr. Stroh?

A. A day or two before I left for Mandan.

Q. When did you arrive in Mandan?

A. On Sunday on May 9th.

(By the COURT:)

Q. You left here on the sixth?

A. Yes, sir.

Q. And arrived there on Sunday morning?

A. I arrived at Fargo on the 8th, and Mandan on the 9th.

Q. And then it took you three days to go from here to Mandan; is that so?

A. Yes, sir.

(By Mr. VOORHEES:)

Q. Arriving at Mandan what did you do?

A. At Mandan?

Q. Yes.

A. Why, the first thing I done I went to my quarters—my rooms.

Q. And where did you go then?

A. At Mr. Stevenson's.

Q. How long did you remain with Mr. Stevenson?

A. Up to the 10th day of August the same year.

145 Q. After you arrived at Mandan on the 9th when did you leave the place?

A. Why, I left in June for one week for the Yellowstone park.

Q. Why did you go to the Yellowstone park?

A. Why, as a pleasure trip.

Q. When you left there what sort of ticket did you buy?

A. A regular excursion ticket; that means I paid for the hotel accommodations, stage rides, and everything complete through the trip, the tickets are issued in that form; you pay $49.50 for the round trip; you can take that any part of the line from Minneapolis or St. Paul; it is the same fare all around.

Q. The Yellowstone lies further west?

A. Yes, sir.

Q. How long were you absent in the Yellowstone park?

A. Just a regular trip; takes five days and a half; and I lay one day sick at the Fountain hotel.

(By the COURT:)

Q. You mean to say you can go through the Yellowstone park in five and a half days from Mandan and back again?

A. No, from the time we entered the park until we go out again that is the official time.

Q. Did you go to the Yellowstone lake?

A. No; I didn't take in any side trip; just the regular excursion trip.

(By Mr. VOORHEES:)

Q. Did you receive the reply that your son states that he wrote you on the 25th of June?

A. I received that at Mandan after I had got back to Mandan; several days afterwards I received a letter forwarded from Yellowstone park.

Q. When were you again absent from Mandan?

A. In July of the same year.

Q. Where did you go then?

A. I started to go to Minneapolis to attend the Grand Lodge of Elks meeting.

Q. Are you a member of that body?

A. Yes, sir; then came on East; remained in New York a few days and returned to Mandan.

Q. What was the state of your health at that time?

146 A. I met with quite an accident; I injured my ribs going across the track in Mandan; and I laid all the time the convention lasted in Minneapolis, nearly all the time, sick in bed, with two physicians; came on East to see my physician here as much as anything.

Q. Who is your physician?

A. Dr. Donohue, of New Brunswick, New Jersey.

Q. Had you any other reason for coming East?

A. Yes, sir; I received a letter at Mandan from a cousin of mine in Europe informing me of the death of an aunt, and also that she left me some money in her will.

Q. Were there any other reasons for your coming East?

A. Yes, I had to do the purchasing of some goods for the firm I was connected with; the buying of some goods for the firm I was connected with at Mandan.

Q. When you came East what had been your idea about going to Europe?

A. The letter I received from my cousin informed me that I had better come over to Europe and look after these affairs.

(By Mr. STRONG:)

Q. Have you that letter?

A. Have I; no, sir.

(Continuing former answer:) As there likely would be a contest.

The COURT: When you speak of letters you had better produce them, as it would be more satisfactory to the court.

The WITNESS: I have not this one. And after coming here I found it was not to my advantage to go to Europe; so instead of that I sent a power of attorney and appointed him in my place, to receive the legacy, which he did.

(By Mr. VOORHEES:)

Q. Did you return to Mandan then?

A. Yes, sir.

Q. Do you remember when you started from New York?

A. I got back to Mandan the first week in August—the 2d or 3d of August; the first week in August, the same year.

147 Q. When you started from New York in May, 1897, to go to Dakota, what was your intention as to your residence?

A. My intention was to acquire a residence in Dakota.

Q. When did you next leave Mandan?

A. On the 12th day of September.

Q. Where did you go then?

A. Minneapolis.

Q. How long were you away?

A. I stayed in Minneapolis a few days at West hotel; I visited

some of the lakes there; and after a few days I went back to Dakota and stopped at Fargo; from Fargo I made several excursions on the lakes, fishing.

(By Mr. CORBIN:)

Q. What lakes?

A. Well, any quantity of them—Crystal lake; and Lake Harriet; Lake Coma; Lake Minnetunka—that is near Minneapolis—Crystal lake is near Fargo; and Lake Teto (?); any number of small lakes; I don't know the names; any amount of fish.

(By Mr. VOORHEES:)

Q. Were you fishing?

A. Yes, sir.

Q. Did you know that there was an injunction issued against you out of the court of chancery of New Jersey restraining or professing to restrain your suiting, then pending in the courts of North Dakota, for divorce?

A. No, sir.

Q. When did you first learn of the existence of that writ?

A. I learned it after I got my decree in Bismarck, the night after; the same night after I got my decree I heard mention of that; heard them speaking about it.

Q. Did you receive a copy of that writ by mail?

A. I never did.

The COURT: Is the proof that a copy was mailed?

Mr. STRONG: Yes, sir.

Mr. VOORHEES: Mr. Rice says he mailed a copy to him at Mandan.

Q. When you left Mandan to go to Yellowstone park in June, 1897, and also when you left Mandan to come East to New
148 York in July, 1897, what was your intention with regard to your return to Mandan, if any?

A. Why, my intention was to return back at once, because I hadn't taken anything with me except two small hand satchels; left all my clothing and everything back there.

Q. At what place was the decree of divorce granted, and where did the trial take place?

A. At the court chambers, at Bismarck, Dakota.

(By the COURT:)

Q. You hadn't been stopping for some time in Mandan before that?

A. No, sir, at Fargo.

Q. You stopped over at Fargo?

A. Yes, sir.

(By Mr. VOORHEES:)

Q. In going from Fargo to Mandan, do you pass through Bismarck first?

A. Yes, sir.

Q. What time of day did your trial take place?
A. At 2 p. m.
Q. Had the day been set down for the trial before that?
A. Been set down before I left Mandan.
Q. Before you left Mandan?
A. Yes, sir.

(By the COURT:)

Q. And when did you leave Mandan, on the 12th of September, was it?
A. On the 12th, yes; generally set it down thirty days ahead.

(By Mr. VOORHEES:)

Q. Where do you claim is your residence?
A. Mandan, North Dakota; North Dakota.
Q. And how long has that been your residence?
A. Ever since the 8th day of May, 1897; I arrived on the 8th at Fargo, Mandan on the 9th.
Q. Now have you voted in Mandan?
A. Yes, sir; I voted last week; I voted before at the primary, and last Tuesday at the regular election.
Q. Had you voted before?

The COURT: At the primary he had, he said.

A. I voted at the primaries all during the summer, and at the regular State election on November 8th.
Q. This year?
A. This year.
149 Q. Have you paid taxes?
A. Yes, sir.
Q. When?
A. Last year and this year; the receipts are in your possession there, I believe.
Q. The election in November last—this present month—was it a closely, hotly contested election?
A. About the hottest I ever had the pleasure to enter.
Q. Any objection made to your voting?
A. No, sir.
Q. Do you hold any office in North Dakota?
A. Yes, sir.
Q. What?
A. On the staff of the governor.
Q. (Showing witness paper.) Will you look at it; is that your commission?
A. Yes, sir.

Mr. STRONG: I don't think this is of any consequence. The commission was issued in May of 1898.
The COURT: I will admit it.
Marked D 3.

Q. After your divorce was granted did you come East?

A. No, sir; I went back to Mandan.

Q. How long did you remain in Mandan?

A. There I was taken sick, either the next day or the second day after the trial, severely sick; so bad that the landlord, the hotel landlord, had my bed removed to the ladies' parlor, and put a second bed up for the nurse, and I stayed there three days—slept four days in that parlor until I was able to get up; then when I was in a condition to get up, under the advice of the doctor I came on to Minneapolis, and I stayed in Minneapolis five days under the doctor there, until I came on East.

Q. Who attended you at Mandan in that illness?

A. Mr. Reed.

Q. Did you have any physicians in Minneapolis?

A. Had two.

Q. Do you know their names?

A. Dr. Pomeroy and Dr. Lewis.

150 Q. After you had been in Minneapolis where did you go to then?

A. From Minneapolis I came on to New York.

Q. Why did you go to New York; aside from your health was there any other reason?

A. Yes, sir.

Q. What was it?

A. Why, the parties I had sold my business to had allowed their obligations to go to protest, and I was forced to bring suit against them; I was there to recover payment; and I did bring suit and got a settlement; and as soon as that was accomplished, under advice of physicians, I went to Europe.

(By the COURT:)

Q. When did you go to Europe?

A. On the fourth day of December.

Q. How long did you stay there?

A. Stayed there until I was summoned to come back——

Q. But the date.

A. I could not tell you the date; I came back in March.

Q. Of this year?

A. Yes, sir.

(By Mr. VOORHEES:)

Q. What was the reason of your coming back?

A. I broke off my treatment there; I was in a sanitarium, and taking the cold-water treatment, and received a summons from Mr. Strong; and I came back by the first connection I could make with the steamer.

Q. Where were you in the sanitarium?

A. At Meran, in the Alps.

(By Mr. STRONG:)

Q. Austria?

A. Yes, sir.

(By Mr. VOORHEES:)

Q. Is that where you received the notice from Mr. Strong?
A. Yes, sir.

Mr. STRONG: Notice served under an order of publication.
Mr. VOORHEES: Yes, sir; a printed notice.

Q. How long were you at Meran?
A. Six weeks and a couple of days, I think; a little over six weeks.
Q. Were you under treatment there?
A. Yes, sir; prior to that I was in an institute there in Nervi, Italy.
Q. What country is Nervi in?
A. Italy.
Q. Is it anywhere near Genoa?
A. Yes, sir; five miles from Genoa.
151 Q. How long were you there?
A. Going on six weeks—five weeks and some days; and Dr. Bridunk there sent me to Meran; I went there on medical advice; I was under treatment from the time I left until the time I came back.
Q. You say you returned in March?
A. Yes, sir.
Q. How long did you remain here?
A. Why until after the answer was filed and some action matters to look after, as you know, three or four weeks; and then I went right back to Mandan.
Q. And have had a room there ever since?
A. Until in July, when Becker & Tietjen allowed another note to go to protest, and I came on, and as soon as that was settled I went right back to Mandan again.
Q. Went back again?
A. Yes, sir; I have been there ever since.
Q. Until you came on?
A. To testify in this suit.
Q. That was in October?
A. Yes, sir.
Q. When the cause was set down for hearing?
A. Yes, sir.

Mr. STRONG: I submit that the movements of the defendant since the bill was filed is of no consequence.

The COURT: I am not so sure; your point is that a man can't make evidence for himself after a suit is brought; that perhaps is well taken, but there is no jury here; your objection is timely; I will admit the evidence however.

Q. (Showing witness the photograph previously shown to Mrs. Bloom.) Have you ever seen that or one similar to that?
A. Yes, I have.
Q. Now who are the persons in that interesting group?
A. The gentleman there is Mr. Bloom; that young lady is from Con-

necticut; I don't recall her name; I think her name is D-e-v-o-r-k-j; I could not say for a certainty; the other young lady came there, she came along as companion of the lady; she is a New York lady—for this lady.

(By the COURT:)

Q. She was a New York lady?

152 A. Yes, sir.

(By Mr. VOORHEES:)

Q. What were they doing there?

A. They came from the normal school, and the young lady had her mother with her; they came out there to visit Mr. Bloom I understood, and stayed about a week or ten days; entire strangers to me.

Q. You had your picture taken, did you?

A. Yes, sir; out riding one day and had the picture taken; the mother was along; she didn't have her picture taken.

Q. That was taken in Mandan?

A. It was.

Q. So you were there?

A. Yes, sir.

Q. They were casual acquaintances of yours?

A. I never had seen the people before; never seen them but once since.

Q. As far as you know they are eminently respectable?

A. As far as I know.

Cross-examination by Mr. STRONG:

Q. Prior to May, 1897, had you ever been in North Dakota?

A. No, sir.

Q. Had you any friends there?

A. No, sir; prior to that, no, sir.

Q. Had you ever corresponded with anybody at that place?

A. No, sir.

Q. When was it you formed the determination to make your residence in North Dakota?

A. Some time before I left.

Q. How long?

A. Don't know.

Q. Don't know?

A. Don't remember.

Q. Was it a year?

A. It might have been ten years; I don't know.

Q. You don't know; can you give us any idea of how long it was?

A. Certainly; some days before I left.

Q. Was it a month?

A. I don't know.

Q. Was it before or after the negotiations which had been

153 going on between you and your wife came to an end that you determined to go to Mandan?

A. About that time, I should think.
Q. What time of day did you leave New York to go there?
A. I left on the six o'clock train.

(By the COURT:)

Q. In the evening?
A. Yes, sir.

(By Mr. STRONG:)

Q. And what time of day did you arrive at Fargo?
A. At Fargo, about 11 o'clock at night, I think.

(By the COURT:)

Q. Of what day?
A. On the eighth.
Q. You left on a Thursday, I understand you?
A. Yes, sir.
Q. And you arrived at Fargo about 11 o'clock at night, on Saturday night?
A. Saturday night.

(By Mr. STRONG:)

Q. That is, two days after you left New York you reached Fargo, in the night?
A. Yes, sir.
Q. And did you journey continuously from New York to Fargo?
A. Yes, sir.
Q. Did you stop anywhere?
A. No, sir; I was sick, and a gentleman who was with me at Chicago had me transferred from one train to another.
Q. You didn't stop at Chicago at all?
A. No, sir.

(By the COURT:)

Q. But you were sick and had to be transferred by carriage or something?
A. Yes, sir.

(By Mr. STRONG:)

Q. So you went there as rapidly as it was possible to go, without stop, to Fargo?
A. Yes, sir.
Q. How long did you remain in Fargo?
A. Why, the train lays there I guess twenty minutes; no longer than the train stops there.

(By the COURT:)

Q. I thought you said you stopped at Fargo?
A. No, sir; I went right on.
Q. I understood your first evidence—I don't say that you meant

to say so—but I understood you to say that you stopped over at Fargo a train or two?

A. No, sir; we reached Fargo on the 8th and Mandan on the 9th.

154 (By Mr. STRONG:)

Q. Now, do you say that you went through Fargo on the same train—left on the same train that you arrived by?

A. The train stops there, I dare say, half an hour or more.

Q. And did you go straight through from Fargo to Mandan?

A. Yes, sir.

Q. Without stop?

A. Yes, sir.

Q. That is, without leaving the train; and when you got to Mandan you got off?

A. Yes, sir; Sunday morning.

Q. What time?

A. About six o'clock; between five and six.

Q. Then you reached Fargo at eleven o'clock at night?

A. Before eleven; I think it was nine o'clock when we reached Fargo.

Q. Didn't you say eleven o'clock?

A. Well, the time—the train reaches there at eleven now, but the train at that time arrived at nine.

Q. And when did you reach Mandan?

A. About six or seven in the morning.

Q. About six or seven in the morning?

A. Yes, sir.

Q. You left the train at Mandan, did you?

A. Yes, sir.

Q. In accordance with your previous intention of making that your residence?

A. I started for that purpose.

Q. To go to Mandan?

A. To go to Dakota.

Q. To go to Dakota or to Mandan?

A. Well, my intention was to go to Dakota.

(By the COURT:)

Q. Where did you buy your ticket for?

A. I bought it for Mandan; I met a gentleman who was going out there and I had company.

(By Mr. STRONG:)

Q. When you started from New York was it your intention——

A. (Interrupting.) To go to Mandan.

Q. (Continuing:) To take up your residence in Mandan?

A. Yes, sir.

Q. And you bought your ticket for that place?

155 A. Yes, sir.

Q. And you traveled right straight through until you got there?

A. Yes, sir.

Q. Now will you tell us what there was about Mandan that was so attractive to you?

A. Well, the country out there is very healthy for people suffering——

Q. What?

A. The country generally is considered very healthy for people who suffer from nervousness, in the first place.

Q. And Mandan in particular?

A. And in the second place I went down for the purpose of getting my citizenship.

(By the COURT:)

Q. But he asks you what attracted you to Mandan in particular.

A. No more than any other place.

(By Mr. STRONG:)

Q. Why did you go to Mandan rather than to any other place?

A. I told you I had company; another gentleman who had been there before, Mr. McFarlan.

Q. Where did you fall in with him?

A. I met him here at New York.

Q. Did he start with you from New York?

A. Yes, sir.

Q. And was he a resident of Mandan?

A. Yes, sir; he was on here on a visit.

Q. Then you went to Mandan in preference to any other part of North Dakota merely because this gentleman was going there; is that it?

A. Yes, sir.

Q. When was it you met this gentleman, Mr. McFarlan?

A. I met him several days before I started, and he was well known to some friends of mine.

Q. When did you meet him—a few days before you started?

A. Yes, sir.

Q. Was that the first time you knew him?

A. Other friends of mine knew him well.

Q. Was that the first time you had met him?

A. The first time I had met him.

156 Q. When you went away from your boarding place in New York where did you tell them you were going?

A. I didn't consider it was any of their business.

(By the COURT:)

Q. But where did you tell them you were going?

A. Told them I was going West.

(By Mr. STRONG:)

Q. Did you tell them you were going to the Yellowstone park by way of Chicago?

A. I did nothing of the kind; simply told them I was going West.

Q. Without specifying where?

A. No, sir.

Q. When you settled with Mr. Stroh before you went away did you tell him that you were going on a pleasure trip with a number of gentlemen to the Yellowstone park?

A. I don't remember; possibly I did.

Q. Possibly you did. What was your object in giving out that statement? If you did, what was your object?

Objected to as hardly a fair question.

The COURT: He has made an answer which a jury might infer as an admission that he did make such a statement; he said he might possibly have done it.

Mr. STRONG: I think my question is competent. "If he did it what was his object?"

A. Evening after evening I had a social game of cards, and might have made a statement of that kind.

(By the COURT:)

Q. If there was any such thing in your mind, if you did tell that, why did you tell him?

A. I didn't think it was anybody's business.

Q. You didn't tell anybody you were going out to Mandan to live?

A. No, sir.

Q. Didn't make known to anybody that you intended to change your residence?

A. Not at that time.

Q. I say at that time, before you went?

A. No, sir.

(By Mr. STRONG:)

Q. You know Hoggatt & Caruthers?

A. I do.

Q. When did you become acquainted with them?

157 A. Prior to my going to Mandan.

(By the COURT:)

Q. Prior to your going?

A. Yes, sir.

(By Mr. STRONG:)

Q. How long prior to your going?

A. I don't remember.

Q. Was it about the time that the negotiations with your wife were broken off?

A. I don't remember, possibly.

(By the COURT:)

Q. Well, have they a law office in New York and one in Mandan—both?

A. I dare say they have several of them for all I know.
Q. Is that a fact known to you?
A. Yes, sir.

(By Mr. STRONG:)

Q. You knew that before you left New York?

The COURT: He said he made their acquaintance before he left.

(By the COURT:)

Q. Did you know that they had an office in Mandan before you left New York?
A. Yes, sir.

(By Mr. STRONG:)

Q. Did they know that you were going to Mandan?
A. Did they know?
Q. Yes, sir.
A. I dare say.

(By the COURT:)

Q. Did you tell them that you were going to Mandan?
A. Yes, sir.
Q. Did you pay them any money before you went to Mandan?
A. To Hoggatt & Caruthers? No, sir.
Q. Did you have a letter from them to their correspondents—to the other part of the firm out there?
A. No, sir.

(By Mr. STRONG:)

Q. When did you become acquainted with H. G. Voss?
A. On the ninth day of May, 1897.
Q. 9th of May, 1897?
A. They lived right opposite my house.
Q. That was the very day that you reached Mandan?
A. Mr. McFarlan took me over there and introduced me to him.
Q. For what purpose?
158 A. To get acquainted with him; he is a prominent man; he is the district attorney; he introduced me to several people there that day.
Q. And that was about the first person you were introduced to?
A. I didn't say it was the first; happened to see him on the street and introduced me to him and several other gentlemen.

(By the COURT:)

Q. I thought you said Mr. McFarlan took you over and introduced you?
A. No, sir; a mistake.

Stenographer being so requested read the previous answer as follows: "Mr. McFarlan took me over there and introduced me to him."

WITNESS: Well, he took me out and we met him.

(By Mr. STRONG:)

Q. When did it first enter your mind to obtain a divorce in North Dakota?

A. Certainly before I went out there, I think.

Q. You said that after you got there in June you went to the Yellowstone park; how long were you absent from Mandan on that occasion?

A. Not over eight days, all told.

Q. Eight days?

A. Not over that; takes one day to go to the park, and one day to come back.

Q. What day did you leave Mandan to go there?

A. What day—what day I left you mean?

Q. Yes.

A. I don't remember.

Q. You don't know what part of the month it was?

A. Last week in June, I think; pretty sure it was.

Q. Who went with you on that trip?

A. Mr. Hoggatt.

Q. Of New York?

A. Yes, sir.

Q. Of Hoggatt & Caruthers?

A. Yes, sir; pleasure trip.

Q. Was he out there on business?

A. I don't know; he was out there on a visit.

Q. Didn't live there?

159 A. He was out there on a visit, and went as far as the Yellowstone park, and he didn't like it and went back again.

Q. What time was it that you returned to Mandan from that trip?

A. In June; I was only gone about a week.

Q. And did you return prior to July 1st?

A. Yes, sir.

Q. In July you went off again to the Elks' convention?

A. I started to go to the Elks' convention.

Q. What day was that?

A. I don't remember.

Q. How early in July was it?

A. About the middle of July, I should judge.

Q. Middle?

A. Somewhere along there.

Q. How long were you in Minneapolis at that time?

A. I think I laid there ten days.

Q. And from Minneapolis you came on to New York?

A. Yes, sir.

Q. And how long were you in New York—you said ten days before?

A. About a week; a week, probably, or ten days; not over that.

Q. And you got back to Mandan from your trip to Minneapolis and New York the first week in August?

A. Some time the first week in August.

Q. You wrote to your son a letter which has been offered in evidence dated the 11th of August, didn't you?

A. Yes, sir.

Q. (Showing witness the letter.) And that was the first information that you gave your son that you were in Mandan or had ever been there, wasn't it?

A. No, sir; I told that boy distinctly that I was out there on business, and had several conversations with him about it.

Q. Where?

A. When I met him here at the Hoffman house in New York.

(By the COURT:)

Q. Where?

A. That I was located out West in business.

(By Mr. STRONG:)

Q. "Out West?"

A. Yes, sir.

Q. Whereabouts in the West did you tell him?

A. Yes, sir.

160 Q. At Mandan?

A. I dare say I did.

Q. Do you swear that you did?

A. If I didn't say Mandan, I said Dakota.

The COURT: Don't excite the witness; he is swearing to everything that he says.

Q. And you told him that at the Hoffman house?

A. I told him all about the particulars of the West; how the country I liked, about the air, and that I was out there in business; and it was well known in the conversation I was out there on business, and him and I talked about it together.

Q. Your letter of August 11, 1897, opens with this sentence: "I suppose you have thought my action and conduct towards you a little strange in some ways of late. Well, my dear boy, the time has come when this explains itself." What did you mean by saying to him that he might have thought your conduct had been strange?

A. The conduct had been strange.

(By the COURT:)

Q. What is the meaning of that language in the letter just shown you; just read the first sentence. (Letter of August 11, 1897, C 5, shown witness.)

A. I suppose I didn't say good-bye to him when I left New York going back West; that is the only explanation I have.

(By Mr. STRONG:)

Q. Is that all the explanation that you have to give?

A. All I remember.

Q. Had you ever given him your address as Mandan and asked him to write to you there?
A. Before this letter, you mean?
Q. Before this.
A. I don't remember that I had.
Q. Why not?
A. Well, you know as much as I how the boy had acted.
Q. You wrote him this letter; you were in correspondence with him?
A. You know what the letter says furthermore.

(By the COURT:)

Q. You had better answer the question and not argue with counsel; answer the question why you didn't tell your son about being in Dakota.
161 A. Because I didn't trust the boy much; his conduct.

(By Mr. STRONG:)

Q. That is your answer, eh?
A. Yes, sir.
Q. In this letter I observe that you say—"Write to me at your earliest convenience; there is no more trouble about sending your letters direct here. Box 86, or even my name, is sufficient;" why did you use that language?
A. Well, why not read the whole of it?
Q. That is all that relates to that part.

(By the COURT:)

Q. Have you any other explanation to give of that language, except what is in the letter?
A. Nothing else; let the letter speak for itself.

(By Mr. STRONG:)

Q. You learned about the injunction issued by the court of chancery of this State, you said, on the same day, in the evening of the same day that you got your decree?
A. I think at dinner that evening.
Q. Who told you that?
A. It was mentioned at dinner; I don't remember.
Q. Can't you tell us who told you?
A. There was quite a number at dinner together, and the conversation came up about the injunction—at the dinner table, I think, if I remember.
Q. Who were at that dinner?
A. The governor—Briggs, Mrs. Briggs——
Q. Mr. Voss?
A. Mr. Voss, Mr. Bloom, myself, and I think one or two more gentlemen besides.

(By the COURT:)

Q. Where was this—at Bismarck?
A. Yes, sir; at the governor's house.

(By Mr. STRONG:)

Q. You had a celebration of the event of your getting the decree, in Mandan, didn't you, the same evening?

A. If you consider a lady giving a gentleman a dinner—if you consider it such.

(By the COURT:)

Q. Some lady gave you a dinner?

A. Mrs. Briggs invited us to the house to supper.

(By Mr. STRONG:)

Q. By way of celebrating your decree?

A. Well I should think not.

162 (By the COURT:)

Q. Whose house was it?

A. The governor's house.

(By Mr. STRONG:)

Q. Where was that?

A. At Bismarck.

Q. I am not speaking of that; did you not have a celebration of the event in Mandan?

A. No, sir.

Q. Did not?

A. No, sir; not that I know of.

Q. Is it not a fact that the attack of illness that you had was due to overindulgence in liquor on your part at that time?

A. No, sir.

Q. You were subject to attacks of gastritis, I think you said?

A. Subject to nervous prostration and gastritis.

Q. And you had a very violent attack of gastritis a day or two after you got the decree?

A. Nervous prostration.

Q. When was it you went to Minneapolis after your decree was granted?

A. A week or ten days.

Q. And from there you went where?

A. At Minneapolis I remained four or five days in the doctor's hands, and then I came East.

Q. And from the time you went to Minneapolis on that occasion you didn't return to Mandan or to Dakota until after you had traveled in Europe, and until after you returned from Meran where you received the notice in this cause?

A. That is right; I never resided in New Jersey after I left.

Q. When in North Dakota you participated in politics there to some extent as a Republican?

A. Yes, sir.

Q. In changing your residence you changed your politics too, didn't you?

A. I did not, sir.
Q. What?
A. I did not.
Q. You never were a Republican in New Jersey?
A. I voted for McKinley, I believe, two years ago.
Q. You ran for the assembly on the Democratic ticket before that?
A. So did others.
Q. Your wife has never been in North Dakota at any time, has she?
A. I don't know.
163 Q. As far as you know?
A. I don't know.

(By the COURT:)

Q. Well you made an affidavit to your petition that you could not find her there at all.
A. She might have been there before, for all I know.

(By Mr. STRONG:)

Q. Down to that time?
A. I don't know. I have no knowledge of her ever having been there.
Q. Nor your son either; he has never been there?
A. I have no knowledge of it.

Defendant rests.

JACOB A. STROH recalled on the part of the complainant.

Direct examination by Mr. STRONG.

Q. Well, have you got the documents now, Mr. Stroh?
A. Yes, sir.
Q. What have you there?
A. A check paid Mr. Streitwolf.

Check shown to the other side.

Mr. STRONG: It would appear that the check although dated the 7th was given on the 5th of May.

Q. Just turn to the stub there; that is dated May 5th?
A. May 5th.

The COURT (examining check): Paid by the bank May 6th.

(By the COURT:)

Q. Well, how about the entry in your book?
A. That is May 7th; it seems I didn't enter it until May 7th; entered May 7th.
Q. And you paid him May 5th?
A. May 5th.

(By Mr. STRONG:)

Q. May 5th was the date you saw him and date of settlement?

A. Yes, sir.
Q. That is all.

Case closed.

164 *Opinion.*

PITNEY, V. C. (orally):

I think I need not hear further argument at this time. I have had occasion to examine the question involved in the recent case of Felt *v.* Felt, 40 Atl. R., p. 436, now before the court of errors and appeals, and have had occasion to think of it.

The object of this supplemental bill is to obtain a decree of the court declaring void a decree of absolute divorce obtained by the defendant against his wife in one of the courts of the State of North Dakota after the filing of the original bill in this cause. The issue raised on this supplemental bill was, by consent of counsel, tried and submitted before the hearing upon the original bill.

The circumstances of this case are these: Mr. and Mrs. Streitwolf were domiciled for many years in New Brunswick, New Jersey. Mr. Streitwolf was in business and owned a house and lot there, which he still owns and rents out. In the early part of August, 1896, his wife left him; the parties separated. On the 17th of August of the same year she filed a bill against him for a divorce from bed and board on the ground of cruelty, and obtained an order for alimony *pendente lite* against him.

In November of that year he sold out his business in New Brunswick, but rented the building and furniture to the grantee of the business, and went to New York and boarded there at a particular place for a while, and then went to Europe on a pleasure tour, and spent the winter in Egypt and the Mediterranean. He returned to New York in March of the following year and remained there until May 5th, 1897.

In the month of April, 1897, negotiations were going on between him and his wife as to a settlement of their difficulties, which
165 produced no results. That the negotiations had entirely failed was manifest a few days before the 1st of May, as I understand Mr. Streitwolf's evidence.

About that time he became acquainted with a firm of lawyers, Hoggatt & Caruthers, who had an office in New York, and another in Mandan, North Dakota. They were attorneys who he learned were engaged in the business of procuring divorces, and he talked with them, as I understand his evidence, and found that they had an office and representative in Mandan, North Dakota. Mr. Streitwolf had never been in Mandan; he knew nobody there, had no connections directly or indirectly with Mandan, or with anybody in North Dakota—he was a perfect stranger to Dakota, both he and all his family.

On the 6th of May, 1897, without informing anybody where he was going, or that he intended to change his residence—that he intended to leave New York or New Jersey, or anything of the kind—he left secretly, you may say, on his own confession, and went to

Mandan; arrived there on Sunday morning, the 9th of May. On the afternoon of the same day he was introduced by a travelling companion to Mr. Voss, who represented Hoggatt & Caruthers in Mandan. He took board at a boarding-house, and stopped there a few weeks, and then went to the Yellowstone park. He wrote nobody at all that he was at Mandan, dated no letters there, and gave no notice to anybody of his residence there. But while in the Yellowstone park he wrote to his son that he was taking a trip through that country; and I think there is some evidence from which a jury might infer that he gave it out when he left New York that he was simply going on a pleasure trip.

In July he came back to New York, and was there a week or more. He stopped on the way in Minnesota, at a meeting of the Society of the Elks; and then came on to New York and sought and obtained an interview with his son, who was then living with his mother
166 in Jersey City and working in New York city, and in that interview stated that he was going to Germany to get a legacy that had been left to him, and invited his son to go with him, and his son promised to give him an answer on a certain evening—the 30th of July, I think. The son went to the rendezvous on that evening, and his father was not there. He hunted around and found he had been out riding, or something of that kind. At any rate, about that time Mr. Streitwolf went to Mandan, and his son or any other person, as far as appears, had not the slightest idea that he had been away from home with a view to changing his residence, or adopting a new home, or going into business in some other place. He arrived at Mandan in August. On the 9th of August, three days from the day he first arrived there, he commenced a suit against his wife for divorce, and took measures to have the papers served upon her in New Jersey.

Now here is a state of circumstances that did not appear in Felt *v.* Felt. It did not appear affirmatively there that the original domicile of Felt and his wife was in New Jersey or New York. It did not appear in that case but that the original domicile of the husband was Utah, where the divorce was granted. But here the original domicile was in New Jersey; and the burden is on the husband to establish the domicile in North Dakota.

Now he procured a notice, etc., to be served on his wife, and about the time he supposed they might be served wrote this long letter dated August 11, 1897, to his son, in which he says: "I suppose you have thought my action and conduct towards you a little strange in some ways of late. Well, my dear boy, the time has come when this explains itself."

As soon as the papers in the Dakota suit were served on the wife she applied to the chancellor for an injunction against her husband proceeding with that Dakota suit, and the chancellor granted
167 an injunction, which is dated September 8th. It was sent to Mandan to be served—put in the hands of the sheriff for service, and on the day it was so put in the sheriff's hands Mr. Streitwolf left Mandan and went East to the Mississippi lakes, fishing, and was gone, as I recollect the evidence, until a short time be-

fore his suit was set for trial, which was an early day in October, as I recollect the evidence. So that there could be no service of the injunction on him personally. It was brought to the knowledge of his counsel, Mr. Voss, and his counsel in New York, and his counsel here; but Mr. Streitwolf swears that he did not know of it until the trial in court. That means that his counsel concealed it from him, if what he has sworn to is true. It cannot be put on any other ground. I should be very much surprised if Mr. Voorhees should state in court that he had not given notice of it to somebody so that it would reach his client.

Now Mr. Streitwolf obtained his divorce in North Dakota, and the question is whether he was a *bona fide* domiciled resident there for three months, or a reasonable time, before that decree was obtained. I do not think that there is any particular charm in three months, or any other length of time. In Utah it required a year's residence, and it was admited in Felt *v.* Felt that Felt was a *bona fide* domiciled resident of Utah for over a year.

If there was a *bona fide* domiciled residence in that State of North Dakota—if Streitwolf went there as any man would go, entirely independent of the question of a desire to get a divorce, if his going there and his adoption of a domicile was thorough and actual—the mere fact that he expected to have the benefit of the laws of the State for a divorce against his wife may not destroy the value of that domicile for present purposes.

But the fact that he did not go there for that purpose has an effect upon the human mind in determining whether or not, upon
168 all the facts, his residence was *bona fide* so as to establish a domicile or not; and that is the very point in the case.

Now there is no proof that he went into solid substantial business there. Something was said about his contract with some man who kept a saloon to be a partner or something of that kind. No details were gone into. The landlord with whom he stayed swore that Streitwolf's business was that of soliciting life insurance. He had no business there. I think that whatever business, or whatever hint of business there may be, is so thin that it makes against rather than for him.

Immediately after he obtained his divorce he was taken sick. He went to Europe soon after, and then this bill, this supplemental bill, to be relieved from the effect of that decree, was filed on the 11th of January, 1898; and the notice of that reached him at a sanitarium in the Austrian Alps; and he came home and attended to his business in New York and New Jersey, and from there again went to North Dakota, and stayed there during this last summer.

Well, I think that while that evidence of subsequent conduct was admitted, it can have very little effect on the case, because it was his policy, when he found that his divorce was attacked, to make the best of it by his subsequent conduct.

But it does not appear yet that he had any motive to go there, or anybody to see there, except to get this divorce, and it is to be observed that it was necessary for him to get a divorce quickly. It was necessary for him to have this decree in order to defend the

action brought by his wife against him in this State. When he found that he could not settle with her, he went to North Dakota post-haste, and commenced his suit there, just ninety days from the very Sunday that he arrived there.

Now without going into the authorities, and speaking from
169 my recollection of the law as laid down by the most respectable courts, it seems to me that it would be a reproach to the administration of justice to hold that by such a visit under such circumstances he acquired a *bona fide* domicile in that State, which, as we all know, is notorious as a resort for people seeking divorces.

Therefore I hold that the evidence satisfies me that there was no *bona fide* domicile in North Dakota, and that the obtaining of a divorce on the ground of domicile was a fraud on the court, and entitles the complainant herein to a decree that it shall not constitute a defence to her suit.

I think this result is clearly within the ruling, not yet reported, of the court of errors and appeals in Magowan *v.* Magowan, reversing this court as reported in 39 At. R., 364. There the defendant appeared to the suit.

It is a serious question whether a service out of the jurisdiction can ever be the ground of a decree of divorce; and the only ground upon which it can safely be put is that of necessity, viz., that the party cannot get his rights without such service. That is the ground upon which I put it in the Felt case. But according to the Magowan case, as decided by the court of errors and appeals, as I understand it, if the complainant in this cause, Mrs. Streitwolf, had appeared to the Dakota suit, it would not have prevented her from setting up here that there had been fraud practiced upon the court in the matter of domicile.

I am quite clear that this decree cannot prevail, and that conclusion renders it unnecessary to determine the question of a breach of the injunction.

I think it worth while to add one more observation. Upon looking at the North Dakota decree it appears that the plaintiff in that suit, the defendant here, put his case there on two grounds, one extreme cruelty of his wife practiced upon him, and the other on the ground of her adultery. A faint effort was made by a witness
176 who was examined in New Jersey to prove the adultery, and it was that effort which I presume was the cause of the son's publishing the article in the newspaper which was put in evidence herein; but the proof failed, and the Dakota decree is based on cruelty of the wife practiced upon the husband. Now it is to be observed that either the adultery or the cruelty, if proven, was a complete defence to the action brought by the wife against the husband in this State, but the cruelty was not a ground here of an absolute divorce.

I will advise a decree declaring the North Dakota divorce void, and will take up the further hearing of the cause at such time as may be fixed.

Final Decree on Supplemental Bill.

(Filed November 22, 1898.)

This cause coming on to be heard at the present October term of said court in the presence of Alan H. Strong, of counsel for complainant, and Willard P. Voorhees and Charles L. Corbin, of counsel with the defendant; upon the supplemental bill, answer thereto and replication, and proofs taken orally; and the said pleadings having been read and the proofs and arguments of counsel thereon having been heard and considered, and it appearing to the court that the judgment or decree of divorce made and entered on the seventh day of October, in the year eighteen hundred and ninety-seven, in the district court of the sixth judicial district of the State of North Dakota, in and for the county of Morton, in said State, in a cause between the said August Streitwolf, plaintiff, and the said Elizabeth Streitwolf, defendant, was obtained by the said August Streitwolf
171 by fraud and imposition upon the said district court; and that the said August Streitwolf was not at the time of commencing said suit or at any time prior thereto, a resident in good faith of the said State of North Dakota, and that the said district court had no jurisdiction of the complainant herein in the said cause.

It is therefore on this eighteenth day of November, in the year eighteen hundred and ninety-eight, ordered, adjudged, and decreed by the Honorable Alexander T. McGill, chancellor of the State of New Jersey, and the said chancellor doth by virtue of the power and authority of this court hereby order, adjudge and decree that the said judgment or decree so as aforesaid entered in said cause in the said district court of the sixth judicial district in and for the county of Morton and State of North Dakota, is wholly void and of no effect; and it is further ordered, adjudged and decreed that the said defendant, August Streitwolf, be and is hereby perpetually enjoined from setting up against her in any manner, relying upon the said judgment or decree, in the suit now pending by the said Elizabeth Streitwolf against him upon the original bill in this cause, or in any other suit or proceeding whatsoever at law or in equity; and that the said complainant recover her costs upon her said supplemental bill against the said defendant, and that she have execution therefor according to the practice of this court.

ALEX. T. McGILL, *C.*

Respectfully advised.
H. C. PITNEY, *V. C.*

A true copy.
L. A. THOMPSON, *Clerk.*

172 *Notice of Appeal.*

(Filed January 7, 1899.)

The defendant hereby appeals from the decree and from the whole and every part thereof made in the above-stated cause, bearing date on the eighteenth day of November, in the year eighteen hundred and ninety-eight, wherein and whereby it was ordered, adjudged and decreed that a certain judgment or decree of divorce made and entered on the seventh day of October, in the year eighteen hundred and ninety-seven in the district court of the sixth judicial district of the State of North Dakota, in and for the county of Morton, in said State, in a cause between the said August Streitwolf, plaintiff, and the said Elizabeth Streitwolf, defendant, is wholly void and of no effect. And whereby it was further ordered, adjudged and decreed that the said August Streitwolf be perpetually enjoined from setting up against the said Elizabeth Streitwolf, or in any manner relying upon the said judgment or decree in the above-stated cause or in any other suit or proceeding whatsoever at law or in equity, to the court of errors and appeals in the last resort in all causes.

Dated January 5th, 1899.

WILLARD P. VOORHEES,
Sol'r & of Counsel with Defendant.

I conceive there is good cause for appeal in the above-stated cause.

WILLARD P. VOORHEES,
Of Counsel with Defendant.

Service of the within notice on us is hereby acknowledged this 11th day of January, 1899.

ALAN H. & THEO. STRONG,
Sol's of Eliz. Streitwolf.

173 *Petition of Appeal.*

To the honorable the court of errors and appeals in the last resort in all causes:

The petition of August Streitwolf, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the court of chancery by his honor Alexander T. McGill, chancellor of the State of New Jersey, bearing date on the eighteenth day of November, eighteen hundred and ninety-eight, wherein and whereby it was ordered, adjudged and decreed that a certain judgment or decree of divorce made and entered on the seventh day of October, eighteen hundred and ninety-seven, in the district court of the sixth judicial district of the State of North Dakota, in and for the county of Morton in said State, in a cause wherein the said August Streitwolf, — plaintiff, and the said Elizabeth Streitwolf, defendant, is wholly void and of no effect; and whereby

it was further ordered, adjudged and decreed that the said August Streitwolf be perpetually enjoined from setting up against the said Elizabeth Streitwolf, or in any manner relying upon the said judgment or decree entered in the said district court of the said State of North Dakota, in the above-stated cause, or in any other suit or proceeding at law or in equity.

And your petitioner humbly appeals from the whole and every part of the said decree of the chancellor, upon the ground that the same is erroneous and contrary to law and equity. Your petitioner therefore prays that the said decree of the said chancellor may be reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

WILLARD P. VOORHEES,
Solicitor and of Counsel with the Appellant.

174 Endorsed: Filed Jan. 27th, 1899. George Wurts, secretary of state.

Service of certified copy of within petition of appeal acknowledged Feb. 1, 1899.

ALAN H. & THEODORE STRONG,
Solicitors of Complainant.

Answer to petition of appeal in common form filed.

175 In Chancery of New Jersey.

Between—

ELIZABETH STREITWOLF, Complainant, and AUGUST STREITWOLF, Defendant. } On Bill, &c. On Petition for Alimony, &c. Order.

This matter being opened to the court by Alan H. & Theodore Strong, of counsel with complainant, upon due notice to and in the presence of Willard P. Voorhees, of counsel with the defendant, upon the petition of the said complainant for alimony and counsel fee, and affidavits having been read upon both sides and the arguments of the respective counsel having been heard, it is on this second day of November, in the year eighteen hundred and ninety-six, ordered that the said defendant forthwith pay to the said solicitors of the complainant a counsel fee of one hundred and fifty dollars, together with the complainant's costs upon said petition, and that he pay to the said complainant alimony at the rate of twelve dollars and fifty cents per week from the seventeenth day of August last (the date of filing the bill of complaint in this cause), the arrears of such alimony now due to be paid forthwith and the payments thereof hereafter to be made at the end of each week during the continuance of this suit.

ALEX. T. McGILL, *C.*

A true copy.
L. A. THOMPSON, *Clerk.*

176 In Chancery of New Jersey.

Between—

ELIZABETH STREITWOLF, Complainant,
and
AUGUST STREITWOLF, Defendant.

On Bill for Divorce. On Petition for Custody of August Streitwolf, Jr.

The defendant in the above-stated cause having filed his duly verified petition praying that an order might be made awarding the custody of said petitioner's son August Streitwolf, Junior, to him during the pendency of the above-stated suit for divorce, and due notice thereof having been given and the matter coming on to be heard in the presence of Willard P. Voorhees, of counsel with the said defendant and petitioner, and of Alan H. Strong, Esquire, of counsel with the said complainant, and the said petition of the said defendant and the affidavits taken thereunder on the part of the said petitioner and also on the part of the said complainant, for the purposes of this application having been read and the arguments of the respective counsel having been heard; and it appearing to the court that it will be for the benefit of the infant that he shall be put at school as hereinafter ordered, and that at the school he shall not be visited by either parent during the pendency of said suit, except as hereinafter stated; and the father having expressed his willingness to defray the expenses of such disposition of the infant:

It is on this second day of November, in the year eighteen
177 hundred and ninety-six, ordered that the said August Streitwolf, Junior, be placed at school in the Peddie Institute at Hightstown, New Jersey, where he formerly was at school, and that the said petitioner pay the expenses of removing the said August Streitwolf, Junior, to said institute, and his expenses at the said institute, including board, tuition, suitable clothing, and petty cash for personal expenditures in such amounts as shall be approved by the principal of the school, not exceeding fifty cents in any week, and that the said August Streitwolf, Junior, shall not, while so attending the said school, be visited there by either of his said parents (except he or she be called by the principal of the school because of illness of the infant, so sudden as not to admit of previous application to this court for permission to make the visit demanded) unless upon application to the court, order shall be made to the contrary.

It is further ordered that further direction upon this application be reserved.

ALEX. T. McGILL, *C.*

A true copy.
L. A. THOMPSON, *Clerk.*

Notice.

To the said defendant and to W. P. Voorhees, Esq., his solicitor:

Take notice, that on Wednesday, the sixteenth day of November, instant, at ten o'clock in the forenoon, or as soon thereafter as we can be heard, we shall move before the Honorable Henry C. Pitney,

vice-chancellor, at the chancery chambers, in Newark, for an order in the above cause requiring said defendant to pay the sum of one hundred and thirty-five dollars for tuition fee and law books as mentioned in the affidavit of August Streitwolf, Junior, a copy of
178 which is hereto annexed; which affidavit will be read in support of said motion.

Dated November 10, 1898.

ALAN H. & THEO. STRONG,
Solicitors of Complainant.

Affidavit.

STATE OF NEW JERSEY, } ss.:
Middlesex County, }

August Streitwolf, Junior, being by me duly sworn according to law, on his oath saith that he is the son of the above-named parties to this suit, and lives with his mother in Jersey City; that since January, A. D. 1897, he has been pursuing the study of the law in the city of New York, both as a clerk in a law office and by attendance at lectures delivered at the law school of New York university during the school year; that the tuition fee for such attendance is one hundred dollars per year, payable on the first of October in each year; that of the one hundred dollars thus due on October 1, 1897, for said attendance by deponent at said lectures, his mother paid twenty-five dollars on account and afterward his father paid the remaining seventy-five dollars; that the sum of one hundred dollars which became due in like manner on the first day of October last remains wholly unpaid, and that it is also necessary that deponent should provide himself with the following text-books prescribed for use by students in connection with said lectures during the now current year, to wit:

1 volume of Keener's Cases on Equity.
Gray on Property (volume 4).
Mechem on Agency.
Summers on Real Property.
2 volumes of Keener *or* Quasi Contracts.
179 Shipman's Common Law Pleading.
Ames' Cases on Pleading.

The cost of said books as near as deponent can now state amounts to thirty-five dollars.

That neither deponent or his mother is able to pay for said tuition or books. That for want of said books he is obliged to study at great disadvantage and inconvenience by using the volumes in the law-school library, which he can only do during certain hours, being thus prevented from utilizing his spare hours at home in studying as he otherwise would.

AUGUST STREITWOLF, JR.

Sworn and subscribed before me November 10, 1898.

FREDERICK WEIGEL,
Master in Chancery of New Jersey.

(Copy.)

180 In Chancery of New Jersey.

Between—

ELIZABETH STREITWOLF, Complainant,
and
AUGUST STREITWOLF, Defendant.

Transcript of shorthand notes taken in above-entitled cause before his honor, Henry C. Pitney, vice-chancellor, at chancery chambers, Newark, Wednesday, November 16, 1898, on motion to increase the alimony *pendente lite* already ordered to the wife sufficiently to pay the tuition fee and costs of law books to enable the son of the parties to attend a law school in New York city during the coming season.

Mr. A. H. Strong, for the motion;
Mr. W. P. Voorhees, *contra*.

AUGUST STREITWOLF, JR., having been duly sworn, called on the part of the complainant:

Direct examination by Mr. STRONG:

Q. What do you work at in the daytime?
A. In a law office.
Q. And what salary do you get?
A. $4.

(By the COURT:)

Q. A week?
A. Yes, sir; I have been getting $4 up to a month ago; but I never got through work until about half past six in the evening,
181 and I could not get in my time for study, so I had arranged it to earn a few dollars on the outside and have use of the office of the firm, so as to meet my daily expenses to and fro.

(By Mr. STRONG:)

Q. How much do you make in that way?
A. Four or five dollars—my daily expenses and meals.

(By the COURT:)

Q. Who boards you; your mother?
A. Yes, sir; my mother; and almost all I get is from my mother.
Q. And who clothes you?
A. My mother.

(By Mr. STRONG:)

Q. Has your father contributed anything to your support outside of the twelve dollars a week which he pays your mother as alimony?

(By the COURT:)

Q. Has he furnished you any money?
A. If I remember right he made me a present of ten dollars, and possibly more, during July, during the week I seen him there.

Q. That is last year?
A. Yes, sir.

Mr. STREITWOLF: That is not so.
WITNESS: He gave me a suit of clothes in April.

(By Mr. STRONG:)

Q. Of last year or this year?
A. April '97, before he went to Dakota; he told me to get a suit of clothes and he would pay for them; and I think it altogether amounted to forty dollars, or something like that, what he has given me since he was away from the house.

Cross-examination by Mr. VOORHEES:

Q. How many offices have you been in?
A. In the office of Perkins & Butler, who formerly done all the lunacy work for the State commission of lunacy in Brooklyn; but politics changed, and it being a political position the work went to a man by the name of Campbell in Brooklyn, and they had to reduce their force in the office; I had attended almost entirely to the lunacy work; and from there I went to the office of Goodridge, Whitney & Havens; I had met the managing clerk while I was with
182 Perkins & Butler, and I have been there ever since; and some time ago I started to make something on the outside, so as to have more time to study, and I have use of the library and so forth.
Q. Where are you now?
A. With the same firm but not working under a salary.
Q. Where is their office?
A. 59 Wall street.
Q. Did you get any money from your father?
A. When?
Q. At any time since this lawsuit has been going on?
A. Since the separation?
Q. Yes, sir.
A. Yes; when I seen him January 1st, 1897, he gave me a present of $25; then in April he told me to get a suit of clothes for Easter; I done so; and he paid I think it was $15; again he gave me $10 in July, 1897, and that was all.

(By the COURT:)

Q. That is, he has given you $35 in money and a suit of clothes that cost $15; that is your recollection now?
A. Yes, sir.

(By Mr. VOORHEES:)

Q. Did he try to get you a situation with Acker, Merrill & Condict?
A. And when I had gone over to meet him he was gone.
Q. And you would not take it?
A. He did get me a position before I left the house.

Q. And you would not take it?
A. No, sir; I didn't take it because I didn't think I was able.

(By Mr. STRONG:)

Q. What was the position?
A. Truck driver.
Q. That was before the separation occurred?
A. Yes, sir.

(By the COURT:)

Q. Didn't think you were strong enough for that, eh?
A. No, sir.

The COURT: Now, then, you may call Mr. Streitwolf, if you wish.

183 AUGUST STREITWOLF, having been duly sworn, called in his own behalf.

The WITNESS: The boy, prior to the leaving of the house, told me he would not work. I asked him why he was discharged from the Hightstown school—expelled—and I asked him then what he proposed to do; that he must choose something to do for a livelihood; that whatever he chose, I didn't care what, he must learn thoroughly. Well, he said he wanted to be a merchant, in business. I took him down to Acker, Merrill & Condict's, saw Mr. Merrill personally, introduced him to him, and I had a conference with Mr. Merrill, who said that he would get him in at the first chance. He said to me, What do you want the boy to learn? I said, I want him to learn the business from the bottom up. He says, That is right, and says to the boy, That is right; just what our fathers did you should do. I said, There is no question of salary anywhere, it is a question of the boy learning this business thoroughly.

It passed along for a week or ten days, and Mr. Merrill sent word that I should send the boy down.

(By the COURT:)

Q. That is after you had separated from your wife; after he had been to Hightstown?
A. He had been expelled before.
Q. Afterwards, eh?
A. Yes, sir; and I sent him down to Mr. Merrill, and the boy came back the same day and says, "I'd like to see myself." I said "What is the matter?" "Why," he says, "I work for three dollars a week; not much." I said, "What did you expect? If Mr. Merrill hadn't given you anything I would not have cared." He said, "He wanted me to go with the wagon and deliver the orders." I asked him if he wanted him to say to him, "Please take a seat and sit around and do nothing." I said All boys have to do that first off. He said he would not do that. Then I said, "What will you do?"

184 He said, "I will work in the store"—work in my own business. I said If that is the case you have to work here just the same as you would for anybody else. But he said he will

work in the store. I then paid him his week's salary just the same as I would anybody else. He got disobedient; would not do anything; would not do this and wouldn't do that. And his mother left; as I understood it was prearranged, and had been for a month before. He left the next day then.

The chancellor then said he should go back to Hightstown. I agreed to it. I paid two terms his tuition fee up at Hightstown prior to his going up there. And this boy could not say enough against me on the public streets; he came right out and defied me. I sent him a team of horses to take him up there——

Q. Up where?

A. To Hightstown. His lawyer said he could do as he pleased, and not as I said, he said. He called me on the street everything, as low as a son of a bitch—as low as that; could not abuse me enough, and say enough; I can prove to you every word. I sent him then $25 for his Christmas to Hightstown; I sent it to the superintendent, and I understood afterwards the superintendent didn't *didn't* give him the twenty-five dollars, because he didn't think he was worthy of it. He came to me on the 1st of January with a great lingo wanting to make up, that he was sorry for his talk, and sorry for what he had done. I felt very sorry and turned right around and gave him twenty-five dollars. He went out with another young man that same night on a drunk, and spent the twenty-five dollars.

(By the COURT:)

Q. You didn't see that yourself?

A. I got information of it the next day. At any rate I received a letter the next day from New Brunswick, saying that the boy had been drunk on the public streets and blackguarding me in every possible way. I sent for the young man he had been out with; I showed him this letter, and I said You know whether the
185 contents of this letter are true; and he read the letter and said, "Mr. Streitwolf, I am sure I can't deny what is in that letter." And I broke down complete, and went to Europe. When I came back he again wanted to make up, and I made up. And then he wanted clothes, and I was ready to pay for them, and paid for them. But what did he do on the first opportunity but turn right around and went on the street and could not say enough bad against me again. That is all. He asked me for books——

(By the COURT:)

Q. What is your objection to paying that money; that money won't go into his hands?

A. He is no more competent to be a lawyer than I would be; he has not done anything; the letters from Hightstown show he has not done anything; he was expelled from there twice; the principal would not have him back under any circumstances, even after my coaxing.

Q. He would not have the spending of any money?

A. Well, I don't propose to pay one dollar towards his law school; let him do something; get into some profession of some kind—some

work; he won't do this, and won't do that; I want to see the boy go to work and learn something; not to be a lawyer, because he thinks he would have nothing to do then; he thinks he must be a gentleman and dress up nice; that is the great objection; what I want to see is for the boy to do something practical; give me evidence to that effect; he has been in three or four law offices already; he was first in Mr. Mack's office; I saw Mr. Mack and had a conversation with Mr. Mack; the first thing I know he left that office; that office was not good enough for him; and went into another office and left there, and now is in another office, all inside of one year; now I leave it to your honor whether he wants to learn anything in that office; because he don't want to do anything; that is all I can make out.

186 The further hearing of the motion adjourned to Monday, November 21, 1898, at Jersey City.

CHANCERY CHAMBERS, JERSEY CITY,
MONDAY, *November* 21, 1898.

Appearances.

Mr. Strong, for the motion.
Mr. Willard P. Voorhees, *contra.*

AUGUST STREITWOLF, JR., recalled on the part of the complainant.

Direct examination by Mr. STRONG:

Q. I show you that paper—what is that?
A. That is a reference from Perkins & Butler.
Q. Given you at the time it bears date, March 1, 1898?
A. March 1, 1898; yes, sir.

Said paper offered in evidence and marked C 1.

Q. And the other paper I show you now is what?
A. Is also a reference from H. S. Mack.
Q. You were formerly in Mr. Mack's office?
A. Yes, sir.
Q. He gave you that on your leaving?
A. Yes, sir.

Said letter of reference signed Hugo S. Mack, and dated May 26, 1897, offered in evidence and marked C 2.

Q. At the close of the university year, the last year, did you pass your examination?
A. I passed all the examinations but one; I was conditioned in one.
Q. How many examinations were there?
A. Six.

(By the COURT:)

Q. What were you conditioned in?
A. Contracts.

Q. How long had you been attending—one term?
187 A. The whole year.

(By Mr. STRONG:)

Q. I show you the rules of the law school.
A. Yes, sir.
Q. Does that contain the rules?
A. Yes, sir; the examination rules.
Q. Issued by the university?
A. Yes, sir.

Mr. STRONG: I offer that for the purpose of showing that in order to be advanced to the higher class it is only necessary to pass three examinations out of six, and he in fact passed five.

Said copy of rules marked C 3.

Q. During the time prior to your father's going to North Dakota, was he aware of your studying law?
A. Yes, sir.
Q. And what did he say or do with reference to that?
A. He encouraged me in it; he had seen Mr. Mack, and also spoke to me in reference to it.
Q. Did he ever forbid you or discourage you?
A. No, sir.
Q. I show you a letter and ask you if you received that at about the time it bears date?
A. Yes, sir.
Q. From whom?
A. From Mr. Willard P. Voorhees.
Q. Your father's solicitor in this case?
A. Yes, sir.
Q. At that time, eh?
A. Yes, sir.

Said letter, bearing date May 15, 1897, offered in evidence and marked C 4.

Cross-examination by Mr. VOORHEES:

Q. Where is the New York University law school?
A. Corner of Washington square east.
Q. There is where the sessions are held?
A. Yes, sir.
Q. There is where you go?
A. Yes, sir.

(By the COURT:)

Q. Up in the old——
A. No; it is in a new building.
188 Q. Near Eighth street?
A. Right near Eighth street—Waverly place.

(By Mr. VOORHEES:)

Q. Did you make application to enter Columbia College law school?

A. No, sir; never.
Q. You never made application to enter any other law school?
A. No, sir.
Q. Were you ever rejected because of your failure to pass in general education, by any law school?
A. No, sir.
Q. Does the University law school require any preliminary examinations?
A. Yes, sir; I passed them in September.
Q. Where?
A. At the university.

(By the COURT:)

Q. This last September?
A. Yes, sir.
Q. But you had been there a whole school year?
A. There is a new rule, passed the 1st of February of the last year, that no student could enter unless he had passed the necessary examination.
Q. So they made you pass although you had been in the year before?
A. Yes, sir; made me pass.
Q. You passed it?
A. Yes, sir.

(By Mr. VOORHEES:)

Q. What did you pass on?
A. Well, they had given me credit for what I passed in the regents, and I passed in algebra and geometry.
Q. You say you failed in your examination on contracts?
A. Yes, sir.

(By Mr. STRONG:)

Q. That is, what conditioned?
A. Was conditioned.

(By the COURT:)

Q. You have to make that up sooner or later?
A. Three years.

Redirect by Mr. STRONG:

Q. With reference to making that up, what opportunity have you to do that?
A. Till I graduate, 1900. This last September I was in-
189 formed it was not necessary to hurry the matter, and to give it plenty of time.
Q. And that you had until your graduation?
A. Yes, sir.
Q. Were you embarrassed in your studies toward the latter part of the time, or just before the examination was to come up, by reason of your taking a position with this firm of Whitney & Havens?

A. Yes, sir, I was; I didn't get off until half past six, and worked all day Saturday, and it was necessary for me to occupy my Sundays in order to get in sufficient time to keep up.

Q. You hadn't as much opportunity after you entered that office as you had before?

A. No, sir; not a minute in the day to myself.

Q. That is all.

The COURT: How much do you want?

Mr. STRONG: The notice will show all that.

By the COURT:

Q. What books do you require?

A. I require—there is Keener's Selected Cases in Equity, Graham on Property, volume 2; Beach on Agency, Sommers' Cases on Property, Keener's Quasi Contracts, Shipman on Common Law Pleadings, and Ames' Common Law Cases.

Q. What do they cost?

A. I don't know the exact cost; I think they average between $34 and $35.

190 ELIZABETH STREITWOLF *v.* AUGUST STREITWOLF.

JERSEY CITY, *November* 21, 1898.

On motion to increase the alimony *pendente lite* already ordered to the wife, sufficiently to pay the tuition fee and cost of law books to enable the son of the parties to attend a law school the coming season in New York city.

Mr. A. H. Strong, for the motion.

Mr. W. P. Voorhees, *contra.*

PITNEY, *V. C.* (orally):

The suit is by the wife against the husband for divorce from bed and board on the ground of extreme cruelty.

The bill was filed on the 17th of August, 1896, and some time after that a petition was filed for alimony *pendente lite*, which was finally brought to a hearing and heard on the 2d day of November, 1896, with the result that the chancellor ordered the defendant to pay the complainant alimony at the rate of twelve and a half dollars per week.

The parties have only one child, a son, now about nineteen years old. They separated a short time before the filing of the bill, and the son has lived with his mother ever since.

On the day that the order for alimony *pendente lite* was made the defendant presented a petition to the chancellor for the custody of the son. That petition was resisted by the wife, with the result that an order was made by the chancellor that the son should be sent to the Hightstown school, and that the father should pay his schooling

there. That such order was made was admitted by counsel
191 on both sides. I find nothing in writing among the papers.

The boy went to the Hightstown school and stayed there only a short time before he was expelled; for what reason does not appear. It is admitted, however, that a year previously he had been expelled from the same school, and the trend of the evidence is to show that he has wayward and uncontrolable disposition. No order was made awarding his custody to the father, and he has ever since lived with his mother.

Shortly after leaving Hightstown in the fall of 1896 he obtained employment in New York city as clerk in a lawyer's office, and the proofs tend to show that he was a faithful, diligent and promising clerk.

In the fall of 1897 an application was made to the chancellor to increase the alimony of the wife sufficiently to enable her to send the boy to a law school in New York which was open at night. This application was met by a decree of divorce granted by a court of North Dakota in favor of the husband and against the wife. I can find no record among the papers of this application, but it was so stated by counsel during the present argument, and so admitted. The chancellor on that second application requested and substantially ordered, verbally, the father to pay $75 towards the boy's tuition for that winter, and the father acquiesced in such order, and did pay his way at the law school.

In the meantime the wife filed a supplemental bill asking that the Dakota decree of divorce be set aside as obtained as the result of a fraud practiced on the court. That cause has just been brought to hearing, and I have advised a decree setting aside that divorce.

Simultaneous with that hearing and decision another application is made for an increase of the alimony *pendente lite*, sufficient to pay for the second winter's tuition at the same law school.

Now the proof satisfies me that after leaving Hightstown the last time the boy has been doing well, and that while he is restive
192 under the control of authority like a schoolmaster, he is not restive under a sort of self-control in connection with employment. And, so far as appears, his conduct in his duties as a law clerk has been entirely satisfactory and quite encouraging, and he seems to have an ambition to study and become a lawyer, and to have conducted himself in a way to indicate that that ambition may bear fruit.

Now laying aside the question of age, and taking the matter on its merits, I am decidedly of the opinion that it is a case where the court ought to order alimony to include the expense of the boy's education in the direction in which he seems to have taken a bent. And the only question is as to his age. Is there any time fixed by the authorities beyond which the court will not order money paid for education, against a father? I recollect of no such rule at all. I have not had an opportunity to look into the cases on the subject, and I hoped that counsel would have assisted me in that respect, since the matter was stirred on Wednesday last, as requested; but neither counsel has been able to assist me with any case on that

subject. And at present I cannot see where the line can be drawn short of legal majority. The boy is making his home with his mother; she is giving him food and raiment. He is studying faithfully and submitting himself to the discipline of the law school. It is apparently the first real success that the boy has made in self-government; and I think that under all the circumstances this order ought to be made. I make it with great hesitation as to the power of the court. On the merits I think it ought to be made; and I will therefore make an order that the money be paid. I will put it in such shape as shall please Mr. Voorhees as to seeing that the money is applied to that purpose. If Mr. Voorhees himself will buy that list of books and pay the money to the proper bursar or treasurer of the university law school, he shall have the privilege of doing so; or Mr. Strong——

193 Mr. STRONG: I would rather leave it with Mr. Voorhees.

The COURT: So that there will be no kind of reason to believe that it will be diverted.

Mr. VOORHEES: I don't want to be understood in that way; that it would be diverted by the boy. It is rather the principle in the case. I do *do* not want to attend to it.

The COURT: As general guardian of the rights of the parties, it is my duty to do that; and I will make the order in that shape if you desire it.

Mr. VOORHEES: I would rather not handle it.

The COURT: Then I will have it paid to Mr. Strong, as an officer of the court. The defendant will pay the $100 fee to the law school, and the bill for the cost of the law books required, and they must be bought at as low a price as possible.

Decree.

This matter being opened to the court by Alan H. & Theodore Strong, of counsel with said complainant, upon due notice to and in the presence of Willard P. Voorhees, of counsel with said defendant, and it appearing that August Streitwolf, Junior, the son of said parties, lives with the said complainant and is supported by her, that he is of the age of nineteen years and is engaged in the study of law and for more than a year last past has attended law lectures at the University of the City of New York, and that it is desirable that he should continue so to do; and it further appearing that the tuition fee for said attendance by said August Streitwolf, Junior, for the current year is now due to the said university and unpaid amounting to one hundred dollars, and that certain law books are required to be used by said August Streitwolf, Junior, in connection with said

194 lectures, the cost of which is the sum of twenty-nine dollars and seventy-five cents; it is, therefore, on this twenty-sixth day of November, in the year eighteen hundred and ninety-eight, ordered that the said defendant pay to the solicitors of the complainant herein by way of additional alimony *pendente lite* the sum of one hundred and twenty-nine dollars and seventy-five cents to be applied by said solicitors to the payment of said tuition fee and the purchase of the

books mentioned in the affidavit of said August Streitwolf, Junior, used upon the hearing of this motion and filed in this cause.

ALEX. T. McGILL, *C.*

Respectfully advised:
H. C. PITNEY, *V. C.*

Notice of Appeal.

(Served December 1, 1898.)

The defendant hereby appeals from the decree or order and from the whole and every part thereof, made in this court in the above-stated cause, bearing date on the twenty-sixth day of November, eighteen hundred and ninety-eight, wherein and whereby the said defendant was ordered to pay to the solicitors of the complainant, by way of additional alimony *pendente lite*, the sum of one hundred and twenty-nine dollars and seventy-five ($129.75) cents, to be applied by said complainant to the payment of the tuition fee and purchase of books for August Streitwolf, Junior, son of this defendant.

To the court of errors and appeals in the last resort in all causes.

Dated November 28th, 1898.

WILLARD P. VOORHEES,
Solicitor and of Counsel with Defendant.

195 I conceive there is good cause for appeal in the above-stated cause.

WILLARD P. VOORHEES,
Of Counsel with Defendant.

A true copy.
L. A. THOMPSON, *Clerk.*

Petition of Appeal.

(Served December 23, 1898.)

To the honorable the court of errors and appeals in the last resort in all causes:

The petition of August Streitwolf, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by an order made in the court of chancery by his honor Alexander T. McGill, chancellor of New Jersey, bearing date on the twenty-sixth day of November, eighteen hundred and ninety-eight wherein the said Elizabeth Streitwolf was complainant and the said August Streitwolf was defendant, in this respect, to wit, that said order adjudges and requires that this petitioner should pay to the solicitors of the respondent by way of additional alimony *pendente lite*, the sum of one hundred and twenty-nine dollars and seventy-five ($129.75) cents to be applied by said respondent to the payment of the tuition fee and purchase of books for August Streitwolf, Junior, son of this petitioner.

And your petitioner humbly appeals from said order of the chancellor and from the whole and every part thereof upon the ground that

the same is erroneous and contrary to law and beyond the jurisdiction of the said court of chancery.

196 Your petitioner therefore prays that said order of the said chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such further relief in the premises as to this honorable court shall seem meet.

WILLARD P. VOORHEES,
Solicitor and of Counsel with Petitioner.

Endorsed: "Filed December 19, 1898. George Wurts, clerk."

Answer to petition of appeal in common form filed.

197 EXHIBIT "D 1."

The Streitwolf Divorce Case.

To the editor of the Home News.

DEAR SIR: My attention has been called to an article published in your paper on Wednesday, Oct. 6, concerning the Dakota divorce of my father, in which I beg to offer a few words of explanation on behalf of my mother.

The allegations alleged in his complaint and verified by the witnesses, one Minnie Johnson, servant, and one Florence Brosse, formerly storetender of the plaintiff, are absolutely false and without foundation.

Through the ingenuity of our counselor, Alan H. Strong, we had secured an injunction from the court of chancery, restraining father from proceeding any further with his Dakota suit and to bring his charges before the said court in this State, where mother's action is now pending. If the allegations set forth in father's complaint had foundation he would, no doubt, have brought his suit in this State before allowing himself to be put in contempt, as such is now the fact, if he has secured his divorce. Hoping I have not intruded too much on your valuable space,

I remain yours very truly,

AUGUST STREITWOLF, JR.

Jersey City, N. J., Oct. 9, 1897.

EXHIBIT "D 2."

NEW YORK CITY, *April* 15, '97.

Mr. W. P. Voorhees.

DEAR SIR: Herewith I enclose you the particulars of the Hightstown case which I think if you can get up in the form of an

198 affidavit and forward it to me I can have it sworn to and it will save you the trouble and expense of coming down, providing it meets with your approval.

Also if you can see Mr. Strong in regards to that matter of settling as Mr. Strong wrote to mother that he would see you at his earliest

convenience and I understand that up to yesterday he has neglected it, you would greatly oblige,

Yours respectfully, AUGUST STREITWOLF, JR.

14 Arlington Ave., Jersey City, N. J.

EXHIBIT "D 3."

UNITED STATES OF AMERICA,

E Pluribus Unum.

STATE OF NORTH DAKOTA.

Frank A. Briggs, governor and commander-in-chief of the military forces of the State of North Dakota, to August Streitwolf, Greeting:

Reposing special trust and confidence in your patriotism, valor, fidelity and abilities, by virtue of these presents, in the name and by the authority of the people of the State of North Dakota, I do hereby appoint and commission you as aide-de-camp on governor's staff in the national guard of this State, to rank as such from the seventeenth day of May, A. D. one thousand eight hundred and ninety-eight.

This commission to remain in force as provided by law.

199 You will therefore carefully and diligently discharge the said duty by doing and performing every matter and thing thereunto relating. You will observe and follow such orders and directions as you shall from time to time receive from the commander-in-chief for the time being, or any other your superior officer, according to military discipline and the laws of the State, and all officers and soldiers under your command are to take notice hereof, and yield due obedience to your orders in your said capacity in pursuance of the trust in you reposed.

Given under my hand, in executive chambers, at Bismarck, this seventeenth day of May, A. D. one thousand eight hundred and ninety-eight.

FRANK A. BRIGGS.

By the governor:

FRED. FALLEY,

Secretary of State.

EXHIBIT "C 10."

STATE OF NEW YORK, }
New York City and County, } ss:

Walter L. Bunnell being by me duly sworn according to law on his oath saith that on the thirteenth day of September, 1897, he served a certified copy of the writ of injunction whereof a copy (certified under the seal of the court of chancery) is hereto annexed upon J. F. O'Donnell, at the office of Hoggatt and Caruthers, attorneys, number 220 Broadway, in the city of New York.

That said O'Donnell being then and there in charge of said offices

at first represented that he was a member of said firm, but
200 when deponent delivered to him the said certified copy of said writ said O'Donnell denied that he was such member. Said O'Donnell at the said time informed deponent that both Mr. Hoggatt and Mr. Caruthers of said firm were then absent from New York city.

WALTER L. BUNNELL.

Sworn and subscribed this 18th day of October, A. D. 1897, at the city of New York, before me a notary public in and for said city, county, and State of New York, as witness my hand and notarial seal.

ALFRED R. BUNNELL,
[NOTARIAL SEAL.] *Notary Public, New York Co.*

201 EXHIBIT C 1.

November 21, 1898.

William L. Perkins. Frank A. Butler.

Perkins & Butler, counselors-at-law, 38 Park row, New York.

Telephone connection.

NEW YORK, *March* 1, 1898.

To whom it may concern:

August Streitwolf, Jr., was in our employ from the 21st of June, 1897, to the 12th of February, 1898. He was at all times trustworthy, willing and competent to perform his duties.

PERKINS & BUTLER.

EXHIBIT C 2.

November 21, 1898.

Hugo S. Mack, counselor-at-law, 7 Beekman St. (Temple court), New York.

MAY 26, 1897.

This is to certify that August Streitwolf, Jr., has been a clerk in my employ since January 19, 1897, during which time I have always found him to be an honest, faithful and courteous clerk.

H. S. MACK.

202 EXHIBIT C 3.

November 21, 1898.

New York University law school.

Rules Governing Examinations.

The examinations for the school year 1897–'98 will begin Friday, May 13th, and end Tuesday, May 31st. (For specific dates and subjects see notice posted on bulletin-board in each class-room.)

The student is requested to supply himself with pencil and eraser; the examination books will be furnished by the school.

The examinations will begin at the time stated on the schedule, unless other notice is given.

No student who enters the examination will be allowed to leave the room until one and one-half hours have elapsed from the time of the beginning of such examination, even though the examination be completed in less time.

No student will be admitted to the examination after one and one-half hours have elapsed from the beginning of the examination.

Students will supply themselves with a number, which can be secured in the registrar's office, and this number is to be used throughout the entire examination. Under no circumstances must a student write his name on the examination book.

At the time of securing the examination number, each student is requested to supply himself with a receipt, which is to be used by the student throughout the entire examination.

No examination book will be received by the professor in charge of the examination without the student receiving a receipt for the same.

The examination fee of $20, payable by the seniors and third-year students only, is due May 1st, and must be paid before the examinations begin.

203 The following extracts from the rules and regulations governing the conduct of examinations, etc., on the part of each member of the faculty, as well as each student, are given for the information of all concerned:

The results of all examinations shall be officially reported by the registrar to the student in writing, not otherwise. No member of the faculty is allowed to give any information in reference to the examinations, or to express any opinion in reference to any statement of grievance expressed by a student. All grievances or matters of request on the part of any student must be reduced to writing and submitted to the faculty.

No student shall be allowed to take the junior and the first and second year examinations in any one subject more than three (3) times, nor the senior and third year more than twice.

No examination for the degree of LL. B. will be held except the regular examination in May of each year.

Examinations for making up conditions in the junior, first and second year evening classes, will be held in September.

Every student in regular standing is required to take the spring examinations, unless specially excused by the examination committee.

No student shall be advanced to the next higher class in his course who has more than three (3) conditions at the opening of the school year.

CLARENCE D. ASHLEY, *Dean.*

April 23, 1898.

204 EXHIBIT C 4.

November 21, 1898.

Willard P. Voorhees, counselor-at-law, Savings Institution building, New Brunswick, N. J.

MAY 15, 1897.

August Streitwolf, Jr., 14 Arlington avenue, Jersey City, N. J.

DEAR SIR: Replying to your letter of the 14th inst., I desire to say that I wrote your father in answer to yours of the 1st inst., that I could not see you on Saturday as you proposed, and that as there was nothing new in the Hightstown matter, it being in the hands of Mr. Perry's lawyer, who had not conferred with me, our interview had better be postponed.

I am sorry you came here and were not informed of my reply. I have heard nothing said about or against you by any one and hope that you will not get such an idea in your mind.

In regard to the Hightstown matter, I had a letter from his attorney in Trenton, who promised to look into the matter and communicate with me. I shall do nothing in the matter until I hear one way or the other from him. As to the encyclopedia, I have no doubt but that you can have them. I shall find out from your father and let you know. I hope you are well and succeeding in your law studies.

Yours truly, W. P. VOORHEES.

205 STATE OF NEW JERSEY:

Court of Errors and Appeals, March Term, 1899.

In the case of—

ELIZABETH STREITWOLF, Compl't & Respd., and AUGUST STREITWOLF, Def't & Appl't. } On Appeal.

No. 50 of March term, 1899.
Date, June 19, 1899.
Magee, C. J., presiding.
On opinion—Pitney, V. C.

Check-list.	Affirm.	Rever'l.
The chief justice	1	
Mr. Justice Depue		
" " Van Syckel	1	
" " Dixon	1	
" " Garrison	1	
" " Lippincott	1	
" " Gummere	1	
" " Ludlow	1	
" " Collins	1	
Judge Bogert	1	
" Nixon	1	
" Hendrickson	1	
" Adams	1	
" Vredenburgh	1	
Totals	13	

Endorsed: "Filed June 19, 1899. George Wints, clerk."

206 New Jersey Court of Errors and Appeals, March Term, 1899.

Between—

ELIZABETH STREITWOLF, Complainant & Respondent, and AUGUST STREITWOLF, Defendant & Appellant. } (No. 50, M'ch T., '99.) On Appeal from Decree on Supplemental Bill. Decree of Affirmance.

This cause coming on to be heard at the March term, one thousand eight hundred and ninety-nine, and being argued by Willard P. Voorhees and Robert Adrain, counsel for the appellant, and Alan H. Strong, counsel for the respondent, and the court having taken time

to consider the same and being of the opinion that the decree of the chancellor should be affirmed in all things—

It is now, on this nineteenth day of June, in the year of our Lord one thousand eight hundred and ninety-nine, ordered, adjudged, and decreed that the decree of the chancellor be in all things affirmed with costs, and that the record and proceedings be remitted to the court of chancery, to be therein proceeded on according to law and the practice of said court.

On motion of—

ALAN H. & THEODORE STRONG,
Solicitors and of Counsel for Respondent.

207 [Endorsed:] New Jersey court of errors and appeals. March term, 1899. Between Elizabeth Streitwolf, compl't & resp'nd't, and August Streitwolf, def't & appellant. On appeal from chancery. Decree of affirmance. —— ——, sol'r. "Filed June 20, 1899. George Wints, clerk."

208 Know all men by these presents that we, August Streitwolf, of Mandan, in the State of North Dakota, as principal, and William S. Strong and John H. Becker, of New Brunswick, New Jersey, as sureties, are held and firmly bound unto Elizabeth Streitwolf, of the city of New Brunswick, county of Middlesex and State of New Jersey, in the full and just sum of five hundred dollars, lawful money of the United States, to be paid to the said Elizabeth Streitwolf, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a court of errors and appeals of the State of New Jersey, in a suit depending in said court between August Streitwolf, appellant, and Elizabeth Streitwolf, respondent, a decree was rendered against the said appellant, and the said appellant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Elizabeth Streitwolf, citing and admonishing her to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said August Streitwolf shall prosecute said writ to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

AUGUST STREITWOLF. [L. S.]
WILLIAM S. STRONG. [L. S.]
JOHN H. BECKER. [L. S.]

Sealed and delivered in presence of—

ROB'T G. MILLER.

209 Approved by—

ALEX. T. McGILL,

Chancellor, President Judge of the Court of Errors and Appeals in the Last Resort in All Causes in the State of New Jersey.

STATE OF NEW JERSEY, }
Middlesex County, } *ss:*

William S. Strong, being duly sworn, deposes and states that he is a resident of the city of New Brunswick, in the county of Middlesex and State of New Jersey.

That he is the same person who has signed the annexed bond; that he is worth more than the sum of one thousand ($1,000.00) dollars over and above all debts, liabilities, and exemptions.

WILLIAM S. STRONG.

Sworn to before me this 28th day of June, 1899.

ROBT G. MILLER,

[L. S.] *Notary Public.*

STATE OF NEW JERSEY, }
Middlesex County, } *ss:*

John H. Becker, being duly sworn, deposes and says that he is a resident of the city of New Brunswick, in the county of Middlesex and State of New Jersey.

That he is the same person who has signed the annexed
210 bond; that he is worth more than the sum of one thousand ($1,000.00) dollars over and above all debts, liabilities, and exemptions.

JOHN H. BECKER.

Sworn to before me this 28th day of June, 1899.

ROBT G. MILLER,

[L. S.] *Notary Public.*

211 [Endorsed:] Supreme Court of the U. S. August Streitwolf, plaintiff in error, *vs.* Elizabeth Streitwolf, defendant in error. Bond for costs.

212 UNITED STATES OF AMERICA, *ss:*

To Elizabeth Streitwolf, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the twenty-seventh day of July next, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals in the last resort in all causes in the State of New Jersey, wherein August Streitwolf is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decree in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alexander T. McGill, chancellor, president judge of the court of errors and appeals in the last resort in all causes in the State of New Jersey, this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

ALEX. T. McGILL,
Chancellor, President Judge of the Court of Errors and Appeals in the Last Resort in All Causes in the State of New Jersey.

WILLARD P. VOORHEES, *Att'y.*

Service of the above citation is hereby acknowledged on behalf of Elizabeth Streitwolf, therein named, this 29th day of June, A. D. 1899.

ALAN H. & THEODORE STRONG,
Attorneys.

213 [Endorsed:] Supreme Court of the U. S. August Streitwolf, plaintiff in error, *vs.* Elizabeth Streitwolf, defendant in error. Citation. Willard P. Voorhees, att'y. Willard P. Voorhees, counsellor-at-law, New Brunswick, N. J.

214 STATE OF NEW JERSEY,

[Vignette.]

DEPARTMENT OF STATE.

New Jersey Court of Errors and Appeals.

I, George Wurts, secretary of state of the State of New Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes in and for said State, do hereby certify that the foregoing is a true copy of the transcript of the record in the case between Elizabeth Streitwolf, complainant and respondent, and August Streitwolf, defendant and appellant, on appeal from the court of chancery, which contains the petition of appeal in the court of errors and appeals in the last resort in all causes filed in my office on the 19th day of December, 1898, also the check list filed June 19, 1899, final decree of the court filed June 20, 1899, and copy of the bonds for costs and copy of citation, as the same are taken from and compared with the originals now remaining on file and of record in my office.

Seal of the Secretary of the State of New Jersey.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court this thirtieth day of June, A. D. 1899.

GEORGE WURTS,
Secretary of State.

215 UNITED STATES OF AMERICA, *ss.:*

The President of the United States of America to the honorable judges of the court of errors and appeals in the last resort in all causes in the State of New Jersey, Greeting:

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of errors and appeals in the last resort in all causes before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between August Streitwolf, appellant and plaintiff in error, and Elizabeth Streitwolf, respondent and defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant and plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties afore-
216 said in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, on the twenty-seventh day of July next, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District in New Jersey, Third Circuit.

WILLARD P. VOORHEES, *Att'y.*

Allowed by—
ALEX. T. McGILL,
Chancellor, President Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

217 The answer of the judges of the court of errors and appeals in the last resort in all causes in the State of New Jersey within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

ALEX. T. McGILL,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

218 [Endorsed:] Supreme Court of the United States. August Streitwolf, plaintiff in error, *vs.* Elizabeth Streitwolf, defendant in error. Writ of error to the court of errors and appeals in the State of New Jersey. Returnable the 27th day of July, 1899. Willard P. Voorhees, att'y, New Brunswick, New Jersey.

219 Supreme Court of the United States.

AUGUST STREITWOLF, Plaintiff in Error,
vs.
ELIZABETH STREITWOLF, Defendant in Error. } Assignment of Errors.

The plaintiff in error, August Streitwolf, in connection with his petition filed herein praying for a writ of error to the court of errors and appeals in the last resort in all causes of the State of New Jersey, to correct the errors made by said court in a certain cause of action herein in which the said Elizabeth Streitwolf was complainant and respondent and the said August Streitwolf was defendant and appellant, avers that in the record and proceedings in said cause and in the decree and remittitur made and filed in said cause by the said court of errors and appeals of the State of New Jersey on or about the twentieth day of June, 1899, there is manifest error, to wit:

I.

That the said New Jersey court of errors and appeals erred by affirming in and by said decree and remittitur the decree of the court of chancery made in said cause on or about the eighteenth day of November, 1898, whereby it was ordered, adjudged, and decreed that the judgment or decree of divorce made and
220 entered on the seventh day of October, in the year eighteen hundred and ninety-seven, in the district court of the sixth judicial district of the State of North Dakota in and for the county of Morton, in said State, in a cause wherein the said August Streitwolf was plaintiff and the said Elizabeth Streitwolf was defendant, is wholly void and of no effect.

II.

That the said New Jersey court of errors and appeals erred by affirming in and by said decree and remittitur the decree of the court of chancery made in said cause on or about the eighteenth day of November, eighteen hundred and ninety-eight, whereby it was

ordered, adjudged, and decreed that the said August Streitwolf, the plaintiff in error herein, be perpetually enjoined from setting up against the said Elizabeth Streitwolf, the defendant in error herein, or in any manner relying upon a certain judgment or decree made and entered on the seventh day of October, in the year eighteen hundred and ninety-seven, in the district court of the sixth judicial district of the State of North Dakota in and for the county of Morton, in said State, in a cause wherein the said August Streitwolf was plaintiff and the said Elizabeth Streitwolf was defendant, or relying upon the said judgment or decree in said suit in the said court of chancery of New Jersey or in any other suit or proceeding whatsoever at law or in equity.

III.

That the said decree and remittitur is erroneous in holding that it was within the power and authority of the court of chancery
221 of the State of New Jersey to take jurisdiction of said cause, whereby the bill filed in said cause was for the purpose of attacking and cancelling the judicial proceedings of the district court of the sixth judicial district of the State of North Dakota in and for the county of Morton, wherein it appeared that said court had jurisdiction of the subject-matter and of the parties to said cause of action, and that the judgment rendered in said court was final and had never been appealed from by either party.

IV.

That the said court of errors and appeals erred and the said decree and remittitur of said court is erroneous because the plaintiff is thereby deprived of the benefits and protection of the constitutional guarantee contained in article 4, section 1, of the Constitution of the United States, which provides that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State, and that the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof, and also of the benefit and protection of the laws and statutes of the United States enacted in virtue of said constitutional provision and guarantee.

V.

That the court of errors and appeals erred and the said decree and remittitur of said court is erroneous because the plaintiff in error is thereby deprived of the benefit and protection of section 905 of the Revised Statutes of the United States, wherein it is provided that "the records and judicial proceedings of the courts of any State or Territory or of any such country shall be proved or admitted
222 in any other court within the United States by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate that the said attestation is in due form, and the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within the United States as

they have by law or usage in the courts of the State from which they are taken."

VI.

That the said court erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held that the court of chancery of the State of New Jersey was invested and still is so invested with jurisdiction to attack and hold for naught the final judgment and decree of the district court of the sixth judicial district of the State of North Dakota in and for the county of Morton, in said State.

VII.

That said court erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held and determined that the district court of the sixth judicial district in and for Morton county, State of North Dakota, never acquired jurisdiction of the subject-matter or of the parties to said cause of action for divorce in which August Streitwolf, the plaintiff in error herein, was plaintiff and Elizabeth Streitwolf, the defendant in error herein, was defendant, and that the said court of chancery of the State of New Jersey had the power, jurisdiction, and authority to and did entertain jurisdiction of a certain cause instituted in the said court of chancery
223 of New Jersey by said Elizabeth Streitwolf, the defendant in error herein, against the said August Streitwolf, the plaintiff in error herein, for the purpose of obtaining a divorce *a mensa et thoro* from the said defendant in error herein, and for alimony after the bonds of matrimony had been finally dissolved between them and an absolute divorce granted to said plaintiff in error by said court in the State of North Dakota.

VIII.

The court of errors and appeals erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held to be within the power and jurisdiction of the court of chancery of the State of New Jersey and of said court of errors and appeals to retry the questions of fact upon which the district court of the sixth judicial district in and for Morton county, State of North Dakota, tried and determined the said action for divorce between the plaintiff in error herein and the defendant in error herein, as aforesaid.

IX.

That said court of errors and appeals erred and the decree and remittitur thereof is erroneous for the reason that the said action for divorce tried and determined by the district court of the sixth judicial district in and for Morton county, State of North Dakota, in which August Streitwolf, the plaintiff in error herein, was plaintiff and Elizabeth Streitwolf, the defendant in error herein, was defendant, thereupon became final and conclusive between the said parties, and is and was *res adjudicata* prior to the bringing of said action in said court of chancery of the State of New Jersey.

224 X.

That said court of errors and appeals erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held and determined that the recitals and findings in the judgment and decree of said district court of the sixth judicial district in and for Morton county, State of North Dakota, were not conclusive, and, further, that said judgment and decree could be collaterally attacked and declared null and void by the court of chancery of the State of New Jersey and by said court of errors and appeals.

XI.

That said court erred in failing and refusing to file its written opinion in said cause, as required by law, setting forth the reasons for disregarding the rights and remedies of the plaintiff in error therein.

XII.

That the said court of errors and appeals erred and the decree and remittitur thereof is erroneous for the reason that thereby the said court did not give to the said judgment and decree of the said district court of the sixth judicial district in and for Morton county, State of North Dakota, such full faith and credit as the said judgment and decree had by law and usage in the courts of the said State of North Dakota.

XIII.

That said court of errors and appeals erred and said decree and *remitting* is erroneous because therein and thereby sundry
225 other errors of law are manifest and contrary to the Constitution of the United States and the law of the land.

Wherefore the said August Streitwolf, the plaintiff in error, prays that the decree and remittitur of the court of errors and appeals be vacated, and for such other and further relief as may be necessary and proper.

WILLARD P. VOORHEES,
Attorney for August Streitwolf, Plaintiff in Error,
New Brunswick, N. J.

226 [Endorsed:] Supreme Court of the U. S. August Streitwolf, plaintiff in error, *vs.* Elizabeth Streitwolf, defendant in error. Assignment in errors. Willard P. Voorhees, att'y. Willard P. Voorhees, counsellor-at-law, New Brunswick, N. J.

227 Supreme Court of the United States.

AUGUST STREITWOLF, Plaintiff in Error,
vs.
ELIZABETH STREITWOLF, Defendant in Error. } Petition.

To the Supreme Court of the United States:

The petition of August Streitwolf, of Mandan, in the State of North Dakota, respectfully shows that on the ninth day of August, in the

year eighteen hundred and ninety-seven, your petitioner commenced an action in the district court of the sixth judicial district of the State of North Dakota in and for the county of Morton, in said State, against his wife, Elizabeth Streitwolf, for an absolute divorce, and that in said suit the said defendant was duly served with process according to law, and such proceedings in said suit were thereupon had on the seventh day of October, eighteen hundred and ninety-seven, by the decree and judgment of said court it was ordered, adjudged, and decreed that the marriage heretofore existing between your petitioner and said Elizabeth Streitwolf be, and the same was thereby, dissolved, and the said parties and each of them were freed from the bonds of matrimony and all the rights, privileges, and obligations thereof, as by reference to said decree entered in said court will more fully and at large appear.

And your petitioner also shows that on or about the seventeenth day of August, in the year eighteen hundred and ninety-six, the said Elizabeth Streitwolf filed her bill in the court of chancery of the State of New Jersey for a divorce *a mensa et thoro*, and that on
228 the eleventh day of January, eighteen hundred and ninety-eight, she filed her supplemental bill in said cause, and wherein, among other things, said Elizabeth Streitwolf charged that the judgment or decree entered in the said sixth judicial court of the State of North Dakota was procured by fraud, and that your petitioner was not a *bona fide* resident of said State of North Dakota for ninety days prior to the commencement of his said suit in that State nor for any period of time, and praying that the said judgment in the said State of North Dakota might be declared and decreed by the said court of chancery of New Jersey to be void and of no effect, and that your petitioner should be perpetually enjoined from setting up or relying upon the same in said suit in the court of chancery of New Jersey or in any other suit or proceeding whatsoever, at law or in equity.

And your petitioner further shows that he filed his answer to the said original bill and to the said supplemental bill so, as aforesaid, exhibited in the said court of chancery of New Jersey, in which said answer to said supplemental bill your petitioner pleaded the said judgment and decree of the said district court of the sixth judicial district of the State of North Dakota in bar to the said suit in the said court of chancery of New Jersey, and annexed to his said answer the duly exemplified copy of the record and judgment of said court of North Dakota, pursuant to the acts of Congress in such case made and provided, and in said answer further pleaded the statutes of the State of North Dakota concerning the granting of divorces in said State, and did in and by said supplemental answer further allege and set up by virtue of the said decree and adjudication of said court of North Dakota, being a court of competent jurisdiction and having jurisdiction of the parties plaintiff and defendant in said suit, the marriage of your petitioner with his wife, Elizabeth Streitwolf, had been and then was dissolved, and that they and each of them were then freed from all the obligations thereof,
229 and that by reason of the provision of article IV, section I, of the Constitution of the United States and by virtue of

section 905 of the Revised Statutes of the United States the said adjudication and decree of the said court of North Dakota was final and conclusive between the parties thereto, and that said judgment and decree of said court of North Dakota being final and conclusive in said State wherein it was rendered was entitled to the same faith and credit in the courts of the State of New Jersey, and that the said court of the said State of North Dakota had in and by said judgment duly and fully ascertained the fact that your petitioner was at the time of the institution of said suit an actual resident in good faith, and had been such actual resident in good faith in the State of North Dakota for a period of ninety days then next preceding the institution of said suit, and that such adjudication and determination by the said court of the said State of North Dakota was final not only in the courts of said State of North Dakota, but in every other jurisdiction within the United States of America, and that the said court of chancery was without jurisdiction to retry the facts ascertained by the said court of North Dakota, and that said decree was and is a complete bar to said suit in said court of chancery.

And your petitioner further shows that in said cause in the court of chancery of New Jersey such proceedings were had and a decree was therein entered on the eighteenth day of November, eighteen hundred and ninety-eight, wherein and whereby it was ordered, adjudged, and decreed by the chancellor of the State of New Jersey that the judgment and decree so, as aforesaid, entered in the district court of the sixth judicial district of the State of North Dakota in and for the county of Morton in the cause aforesaid was and is wholly void and of no effect, and it was in said decree entered
230 in said court of chancery, as aforesaid, further ordered, adjudged, and decreed that your petitioner be perpetually enjoined from setting up against the said Elizabeth Streitwolf or in any manner relying upon the said judgment or decree of the said court of North Dakota in the said suit then pending in the court of chancery of New Jersey by said Elizabeth Streitwolf against your petitioner upon the original bill in said cause in said court of chancery or in any other suit or proceeding whatsoever at law or in equity.

And your petitioner further shows that immediately upon the entering of said decree your petitioner duly appealed from the whole and every part thereof to the court of errors and appeals in the last resort in all causes in the State of New Jersey, and that such proceedings were had upon said appeal that on or about the twentieth day of June, in the year eighteen hundred and ninety-nine, a judgment or decree was rendered in the said court of errors and appeals of the State of New Jersey, being the highest court in said State to which an appeal could be taken in all causes, affirming the decree of the said court of chancery and ordered the record of said suit to be remitted to the said court of chancery to be dealt with in accordance with the decree and judgment of the said court of errors and appeals.

And your petitioner further shows that there was in said judg-

ment of the said court of errors and appeals drawn in question the validity of a statute of the United States and the decision therein was against the validity of such statute, and there was drawn in question the construction of *the* clause of the Constitution and *the* statute of the United States and the decision of the said court of errors and appeals was against the right, privilege, and exemption specially set up and claimed by your petitioner under such clause of the said Constitution and under such statute.

231 And your petitioner further shows that there was manifest error in the record and proceedings in said cause and in the decree made and filed in said cause by the court of errors and appeals of the State of New Jersey, as is shown by the copy of said record and assignments of error herewith presented; wherefore your petitioner prays that a writ of error may be allowed and issued out of this court to the said court of errors and appeals of the State of New Jersey.

And your petitioner will ever pray, &c.

WILLARD P. VOORHEES,
Attorney & of Counsel with Petitioner, New Brunswick, N. J.

Desiring to give the petitioner an opportunity to test in the Supreme Court of the United States the questions presented in the foregoing petition and assignments of error therewith, it is ordered that a writ of error be allowed to said court of errors and appeals of the State of New Jersey, returnable into the Supreme Court of the United States.

I have approved a bond in the penal sum of five hundred dollars herewith presented pursuant to the statute.

In testimony whereof I have set my hand this 28th day of June, A. D. eighteen hundred and ninety-nine.

ALEX. T. McGILL,
Chancellor, President Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

232 [Endorsed:] Supreme Court of the U. S. August Streitwolf, plaintiff in error, *vs.* Elizabeth Streitwolf, defendant in error. Petition for writ of error. Willard P. Voorhees, att'y. Willard P. Voorhees, counsellor-at-law, New Brunswick, N. J.

Endorsed on cover: File No., 17,477. New Jersey court of errors and appeals. Term No., 109. August Streitwolf, plaintiff in error, *vs.* Elizabeth Streitwolf. Filed July 27th, 1899.

No. 109.

Brf. of Voorhees & Adrain for P. E.

FILED
NOV 14 1900
JAMES H. McKENNEY,
Clerk

109

Filed Nov. 14, 1900.

Supreme Court of the United States.

AUGUST STREITWOLF.....*Plaintiff in Error,*

VERSUS

ELIZABETH STREITWOLF....*Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

WILLARD P. VOORHEES,
ROBERT ADRAIN,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

AUGUST STREITWOLF.....*Plaintiff in Error,*

VERSUS

ELIZABETH STREITWOLF....*Defendant in Error.*

Brief for Plaintiff in Error.

STATEMENT.

This is a Writ of Error to the Court of Errors and Appeals in the Last Resort in all Causes of the State of New Jersey. It runs to a judgment entered in that Court affirming the decree of the Chancellor entered in a cause in the Court of Chancery of New Jersey wherein the defendant in error was complainant and the plaintiff in error was defendant.

For brevity we will call the plaintiff in error "Mr. Streitwolf" and the defendant in error "Mrs. Streitwolf."

They were married on the third day of June, eighteen hundred and seventy-seven, and lived together as husband and wife in the city of New Brunswick, New Jersey, down to about the third day of August, eighteen hundred and ninety-six, when Mrs. Streitwolf left her husband, as she alleges in consequence of his abuse and ill-treatment (R. 1).

On the seventeenth day of August, eighteen hundred and ninety-six, Mrs. Streitwolf filed her original bill in the Court of Chancery of New Jersey for divorce from bed and board on the ground of cruelty. During their married life and up to the time of the separation, the parties had lived in a house in New Brunswick, which Mr. Streitwolf owned, the lower part of which was used for his store and the upper part was the living apartments. After the rupture between them and the departure of his wife, Mr. Streitwolf sold out his business and leased the real estate and building and furniture to the purchasers of the business and left the State of New Jersey and

abandoned his residence there and took up his residence in the city of New York (R. 25 and 102). He never resided in New Jersey after this time (R. 120); and continued to make his residence and remained domiciled in the State of New York until the sixth day of May, eighteen hundred and ninety-seven, when he left the State of New York and took up his residence and domicile at Mandan in the State of North Dakota (R. 104). He was temporarily absent in Egypt from January 1, 1897, to March, 1898, on account of ill health (R. 103). The fact of his change of domicile from New Jersey to New York in November, eighteen hundred and ninety-six, stands uncontroverted in the case.

During the period from May, eighteen hundred and ninety-seven, to November, eighteen hundred and ninety-eight, when Mr. Streitwolf came to the State of New Jersey for the purpose of attending the hearing in this case in the Court of Chancery, he was actually at Mandan in the State of North Dakota continuously, with the exception of certain short excursions which will be hereafter referred to. During the time of his residence in the State of North Dakota, he was in business there, participated in the caucus for the election of delegates to the Republican State Convention, in July, eighteen hundred and ninety-eight, at which it was a crime to vote, unless qualified by a previous residence for one year (R. 57). He was commissioned aide-de-camp on the Governor's staff May 17th, 1898 (Exhibit D. 3—R. 143).

Mr. Streitwolf also voted at the regular State election in November, eighteen hundred and ninety-eight, and paid taxes in 1897 and 1898 (R. 106).

Mr. Streitwolf was physically present in North Dakota during all this period except for about a week in June, 1897, when he visited the Yellowstone Park, purchasing at Mandan an excursion or return ticket, which included hotel accommodations, stage rides, etc., as well as railway fares, and entitled him to return to Mandan (R. 105).

In July of the same year he was notified of the death of an aunt in Germany who had left him a legacy, and he came to New York with the idea of going to Europe about the legacy.

stopping en route at Minneapolis to attend the convention of the Order of Elks, but gave up the idea of going to Europe and returned to Mandan about the second or third day of August.

On the twelfth day of September he left Mandan and went to Minneapolis for a few days, and made a trip through the Minnesota lakes, fishing (R. 106-107).

His intention was always to return to Mandan at once (R. 107).

On the ninth day of August, eighteen hundred and ninety-seven, Mr. Streitwolf commenced a suit for divorce in the District Court of the Sixth Judicial District of the State of North Dakota (R. 33). Mrs. Streitwolf was served with notice of this suit personally, in the city of Jersey City, New Jersey, on the seventeenth day of August, eighteen hundred and ninety-seven (R. 36). On the seventh day of September, eighteen hundred and ninety-seven, Mrs. Streitwolf filed a petition for injunction in the Court of Chancery of New Jersey and obtained a writ of injunction restraining him from prosecuting his suit for divorce in North Dakota, which, however, was never served upon Mr. Streitwolf, nor did it ever come to his knowledge. No appearance or answer was entered or filed by her in the North Dakota suit, and a decree was made therein on the seventh day of October, eighteen hundred and ninety-seven, absolutely divorcing Mr. Streitwolf from his wife and absolutely freeing him of and from all marital relations and all obligations arising therefrom, and the marriage theretofore existing between the parties was thereby dissolved, and the parties and each of them freed from the bonds of matrimony and all the rights, privileges and obligations thereof.

On the eleventh day of January, eighteen hundred and ninety-eight, Mrs. Streitwolf filed her bill supplementary to her original bill, in the Court of Chancery of the State of New Jersey against Mr. Streitwolf, therein alleging that Mr. Streitwolf had gone to North Dakota in execution of a scheme concocted for the purpose of obtaining an adjudication which could be used to defeat her suit for divorce, and praying that the judgment of the North Dakota Court might be declared void and of no effect and that Mr. Streitwolf be perpetually

enjoined from setting the same up in her suit for divorce in New Jersey (R. 141).

Mr. Streitwolf filed his answer to the supplemental bill in April, eighteen hundred and ninety-eight, denying all the allegations thereof and pleading the decree of the North Dakota Court, and also in said answer setting up that by the provision of Article IV, Section 1 of the Constitution of the United States, wherein it is provided that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and that the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof, the judgment in the State of North Dakota was entitled to such full faith and credit in the State of New Jersey, and was conclusive between the parties; and that under Section 905 of the Revised Statutes of the United States, providing that the records and judicial proceedings authenticated as in said act prescribed, shall have such faith and credit given them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken, the adjudication of the said North Dakota Court was final and conclusive between the parties and that the judgment or decree therein entered being final and conclusive in the State of North Dakota wherein it was rendered, was entitled to the same faith and credit in the Courts of the State of New Jersey; and that the North Dakota Court had in and by said judgment duly and fully ascertained the fact that Mr. Streitwolf was at the time of the institution of said suit, an actual resident, in good faith, of said State of North Dakota for the requisite period prescribed by the Statute of that State, and that such adjudication and determination of the North Dakota Court was final not only in the Courts of that State but in every other jurisdiction within the United States of America (R. 23 to 33), and prayed the same benefit of such defense as if he had demurred to the bill.

Mrs. Streitwolf did not bring on the hearing of her New Jersey suit until November 16th, 1898, when the case was opened before the Court of Chancery of New Jersey, and the hearing was then confined to the issue raised by the supple-

mental bill and supplemental answer, or in other words, to the validity of the North Dakota divorce (R. 72).

In that hearing, witnesses were produced on the part of Mrs. Streitwolf to show that the residence and domicile of Mr. Streitwolf in North Dakota was not *bona fide* and that Mrs. Streitwolf had always lived in the State of New Jersey.

At that hearing Mr. Streitwolf produced witnesses in opposition to the testimony given on the part of his wife, and also produced a duly exemplified copy of the record of the North Dakota suit, and the Statutes of North Dakota.

The Vice Chancellor thereupon rendered his opinion (R. 122), and subsequently, on the twenty-second day of November, eighteen hundred and ninety-eight, decreed "that the said "judgment or decree so as aforesaid entered in said cause in "the said District Court of the Sixth Judicial District in and "for the County of Morton, in the State of North Dakota, is "wholly void and of no effect. And it is further ordered, ad-"judged and decreed that said defendant August Streitwolf, "be and is hereby perpetually enjoined from setting up against "her or in any manner relying upon the said judgment or de-"cree in the suit now pending by the said Elizabeth Streitwolf "against him upon the original bill in this cause," etc. (R. 126).

From this decree an appeal was taken to the Court of Errors and Appeals in the Last Resort in all Causes in the State of New Jersey, and a decree of affirmance was entered in said Court of Appeals on the nineteenth day of June, eighteen hundred and ninety-nine (R. 147).

To this decree still remaining in said Court of Errors the writ of error in this case is directed, and the question in this case is whether the decree of that Court declaring void the judgment of the North Dakota divorce was a valid exercise of the power of the Court of Chancery of New Jersey or whether such decree was in violation of Article IV, Section 1 of the Constitution of the United States and of Section 905 of the Revised Statutes of the United States.

ERRORS ASSIGNED.

I.

That the said New Jersey Court of Errors and Appeals erred by affirming in and by said decree and remittitur the decree of the Court of Chancery made in said cause on or about the eighteenth day of November, 1898, whereby it was ordered, adjudged and decreed that the judgment or decree of divorce made and entered on the seventh day of October, in the year eighteen hundred and ninety-seven, in the District Court of the Sixth Judicial District of the State of North Dakota, in and for the County of Morton, in said State, in a cause wherein the said August Streitwolf was plaintiff and the said Elizabeth Streitwolf was defendant, is wholly void and of no effect.

II.

That the said New Jersey Court of Errors and Appeals erred by affirming in and by said decree and remittitur the decree of the Court of Chancery made in said cause on or about the eighteenth day of November, eighteen hundred and ninety-eight, whereby it was ordered, adjudged and decreed that the said August Streitwolf, the plaintiff in error herein, be perpetually enjoined from setting up against the said Elizabeth Streitwolf, the defendant in error herein, or in any manner relying upon a certain judgment or decree made and entered on the seventh day of October, in the year eighteen hundred and ninety-seven, in the District Court of the Sixth Judicial District of the State of North Dakota, in and for the County of Morton, in said State, in a cause wherein the said August Streitwolf was plaintiff and the said Elizabeth Streitwolf was defendant, or relying upon the said judgment or decree in said suit in the said Court of Chancery of New Jersey, or in any other suit or proceeding whatsoever at law or in equity.

III.

That the said decree and remittitur is erroneous in holding that it was within the power and authority of the Court of Chancery of the State of New Jersey to take jurisdiction of said cause, whereby the bill filed in said cause was for the purpose of attacking and cancelling the judicial proceedings of the District Court of the Sixth Judicial District of the State of North Dakota, in and for the County of Morton, wherein it appeared that said Court had jurisdiction of the subject-matter and of the parties to said cause of action, and that the judgment rendered in said Court was final and had never been appealed from by either party.

IV.

That the said Court of Errors and Appeals erred and the said decree and remittitur of said Court is erroneous because the plaintiff is thereby deprived of the benefits and protection of the constitutional guarantee contained in Article IV, Section 1 of the Constitution of the United States, which provides that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and that the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof, and also of the benefit and protection of the laws and statutes of the United States enacted in virtue of said constitutional provision and guarantee.

V.

That the Court of Errors and Appeals erred and the said decree and remittitur of said Court is erroneous because the plaintiff in error is thereby deprived of the benefit and protection of Section 905 of the Revised Statutes of the United States, wherein it is provided that "the records and judicial proceedings of the courts of any State or Territory or of any

such country shall be proved or admitted in any other court within the United States by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate that the said attestation is in due form, and the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

VI.

That the said Court erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held that the Court of Chancery of the State of New Jersey was invested and still is so invested with jurisdiction to attack and hold for naught the final judgment and decree of the District Court of the Sixth Judicial District of the State of North Dakota, in and for the County of Morton, in said State.

VII.

That said Court erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held and determined that the District Court of the Sixth Judicial District, in and for Morton County, State of North Dakota, never acquired jurisdiction of the subject-matter or of the parties to said cause of action for divorce in which August Streitwolf, the plaintiff in error herein, was plaintiff, and Elizabeth Streitwolf, the defendant in error herein, was defendant, and that the said Court of Chancery of New Jersey had the power, jurisdiction, and authority to and did entertain jurisdiction, of a certain cause instituted in the said Court of Chancery of New Jersey by said Elizabeth Streitwolf, the defendant in error herein, against the said August Streitwolf, the plaintiff in error herein, for the purpose of obtaining a divorce *a mensa et thoro* from the said defendant in error herein, and for alimony after

the bonds of matrimony had been finally dissolved between them and an absolute divorce granted to said plaintiff in error by said Court in the State of North Dakota.

VIII.

The Court of Errors and Appeals erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held to be within the power and jurisdiction of the Court of Chancery of the State of New Jersey and of said Court of Errors and Appeals to retry the questions of fact upon which the District Court of the Sixth Judicial District, in and for Morton County, State of North Dakota, tried and determined the said action for divorce between the plaintiff in error herein and the defendant in error herein, as aforesaid.

IX.

That said Court of Errors and Appeals erred and the decree and remittitur thereof is erroneous for the reason that the said action for divorce tried and determined by the District Court of the Sixth Judicial District, in and for Morton County, State of North Dakota, in which August Streitwolf, the plaintiff in error herein, was plaintiff, and Elizabeth Streitwolf, the defendant in error herein, was defendant, thereupon became final and conclusive between the said parties, and is and was *res adjudicata* prior to the bringing of said action in said Court of Chancery of the State of New Jersey.

X.

That said Court of Errors and Appeals erred and the decree and remittitur thereof is erroneous for the reason that thereby it is held and determined that the recitals and findings in the judgment and decree of said District Court of the Sixth Judicial District, in and for Morton County, State of North Da-

kota, were not conclusive, and, further, that said judgment and decree could be collaterally attacked and declared null and void by the Court of Chancery of the State of New Jersey and by said Court of Errors and Appeals.

XI.

That said Court erred in failing and refusing to file its written opinion in said cause, as required by law, setting forth the reasons for disregarding the rights and remedies of the plaintiff in error herein.

XII.

That the said Court of Errors and Appeals erred and the decree and remittitur thereof is erroneous for the reason that thereby the said Court did not give to the said judgment and decree of the said District Court of the Sixth Judicial District, in and for Morton County, State of North Dakota, such full faith and credit as the said judgment and decree had by law and usage in the courts of said State of North Dakota.

XIII.

That said Court of Errors and Appeals erred and said decree and remittitur is erroneous because therein and thereby sundry other errors of law are manifest and contrary to the Constitution of the United States and the law of the land.

ARGUMENT.

The faith and credit to which a judgment of one State is entitled in a Sister State.

"Full faith and credit shall be given in each State to the

public acts, records and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof."—Article IV, Section 1 of the Constitution of U. S.

In Huntington v. Attrill, 146 U. S. 684, it is said:

"Congress in the exercise of its power so conferred, besides prescribing the manner in which the records and judicial proceedings of any State may be authenticated, has defined the effect thereof by enacting that 'the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.'"

This puts the judgments of sister States upon a higher plane than that of comity. The effect is the same as that given by the courts of the State rendering the judgment.

Renaud v. Abbott, 116 U. S. 277, and
Hanley v. Donoghue, 116 U. S. 1.

Such judgments cannot be questioned *on their merits nor are they impeachable for fraud in obtaining them.*

In Wisconsin v. Pelican Insurance Co. 127 U. S. 265, it is said:

"These provisions establish a rule of evidence. They make the record of a judgment rendered, after due notice in one State, conclusive evidence in the Courts of another State of the matter adjudged. Judgments of one State . . . when proved in the Courts of another . . . State within the United States, differ from judgments recovered in a foreign country, in no other respects than in not being re-examinable on their merits nor impeachable for fraud in obtaining them, if rendered by a Court having jurisdiction of the cause and of the parties." Citing Hanley v. Donoghue, supra.

Christmas v. Russell, 5 Wall. 290.
Maxwell v. Stewart, 22 Wall. 77.

Such a judgment or decree cannot be questioned in collateral proceedings. If erroneous, it can only be avoided by an appeal.

Union Trust Co. v. Southern Inland Nav. & Imp. Co. 130 U. S. 565.

The jurisdiction of the Court can be inquired into.

It is useless to burden the Court with a long train of authorities holding to this doctrine in general terms.

This line of cases may be said generally to show an inquiry into the jurisdiction of the Court as to the subject matter or as to the *notice to the defendant.*

The inquiry in them is not directed to a consideration of those facts which necessarily the Court must decide for itself in order to determine the jurisdiction.

It must be also conceded that the doctrine is clearly established that jurisdiction having once attached the judgment cannot be avoided by showing that it was obtained by fraud.

Christmas v. Russell, 5 Wall. 290, is the leading case.

In Cole v. Cunningham, 133 U. S. 102, a rule inconsistent with this doctrine was stated and yet the Court in that case relies upon Hanley v. Donoghue, 116 U. S. 1.

Bayley in his work on Jurisdiction, Section 202, says that Cole-Cunningham is inconsistent and not in accord with the line of decisions of this Court.

Decrees of Divorce are within the Constitutional Provision and the Federal Statute.

Barbour v. Barbour, 21 Howard, 583.

In Cheever v. Wilson, 9 Wall. 123, the Court, speaking of the validity of a decree for divorce, said: "The Constitution and laws of the United States give the decree the same effect elsewhere which it had in Indiana. If a judgment is conclusive in a State where it is rendered, it

is equally conclusive everywhere in the Courts of the United States."

Laing v. Rigney, 160 U. S. 532, was a case decreeing divorce by the Court of Chancery of New Jersey. The New York Courts refused to give the decree for alimony any effect and the judgment was reversed in this Court distinctly upon the ground that effect had not been given to the provision of the Federal Constitution concerning full faith and credit.

A suit for divorce is in rem.

This Court has always held that marriage, while being a civil contract, in its inception, results in a relation and a status. This Court said in Cheever v. Wilson, 9 Wall. 123:

"The proceedings for a divorce may be instituted where the wife has her domicile; the place of marriage, of the offense, and of the domicile of the husband are of no consequence."

And so in Pennoyer v. Neff, 95 U. S. 734, the Court stated:

"To prevent any misapplication of the views expressed in this opinion, it is proper to observe that we do not mean to assert, by anything we have said, that a State may not authorize proceedings to determine the status of one of its citizens towards a non-resident, which would be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil status and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory. The State, for example, has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved. One of the parties guilty of acts for which by the law of the State a dissolution may be granted may have removed to a State where no dissolution is permitted. The complaining party would therefore fail if a divorce were sought in the State of the defendant; and if application could not be made to the tribunal of the complainant's domicile in such case, and pro-

ceedings be there instituted without personal service of process or personal notice to the offending party, the injured citizen would be without redress. Bishop on Marriage and Divorce, Section 156."

And so in Cheeley v. Clayton, 110 U. S. 701.

Maynard v. Hill, 125 U. S. 191.
Hilton v. Guyot, 159 U. S. 113.

The reasoning in these cases is not at all applicable to actions *in personam.*

Service of Process.

In divorce cases a constructive service out of the jurisdiction of the Court, is equally effectual as actual service of process.

In 2nd Bishop on M. & D. Sec. 152, it is said:

"The present clear American doctrines made conclusive by decisions of the Court of ultimate resort, accepts ex parte divorces pronounced by the Court of the applicant's domicile in full compliance with the local law, after its constructive notice to the absent defendant as adequate everywhere to dissolve or otherwise ascertain the marriage status."

And so in 2nd Freeman on Judgments, 585.
1st Greenleaf on Evidence, Section 525.
2nd Black on Judgments, Section 925, et seq.

Such is the law of the State of New Jersey. In Felt v. Felt, N. J. Chancery, 12 Dick. 101, affirmed on appeal, 45 Atl. Rep. 105, it is said:

"It appears sufficiently for present purposes that the complainant herein has always lived in New Jersey. A very learned and elaborate argument was made in her behalf to support the position that a decree of divorce could not be rendered against her in another State, which would

be valid and binding in this State, without actual service of process upon her in that State, or her voluntary appearance therein. The ground of this position was that another State could not obtain jurisdiction of her person, for the purpose of a suit for divorce, by pub'ication or service upon her out of that jurisdiction, and hence the decree was a nullity in this State. I am unable to adopt that view. I think it not only fairly covered by authority in this State, but that it had no foundation in reason. Chancellor Zabriskie, in Coddington v. Coddington, 20 N. J. Eq. 264, held that proceedings with regard to the validity or dissolution of marriage are proceedings in rem and actually operate upon the matter, and that the power of the court to deal with the marriage relation depends upon the fact of the domicile of one or both of the parties being within its territorial limits, and that, to enable the court to obtain jurisdiction, one at least of the parties must be domiciled within the jurisdiction. Such domicile gave jurisdiction to proceed and determine the status of the parties. In this case it is an admitted fact that the defendant herein was domiciled in the Territory of Utah for one year before, and at the time the suit was commenced by him and the decree rendered against the wife. The power of the court of that Territory to determine his status as to marriage was complete, and its action must be respected by us, provided it has been based upon grounds recognized as sufficient by civilized peoples, and reasonable notice and opportunity to appear and be heard has been given to the other party interested. The mere residence of the wife in another State can not affect the jurisdiction in that behalf of the court in which the husband is domiciled. To hold otherwise, as has been done by the courts of New York, in the cases cited by counsel, is, in effect, to deny relief to an injured spouse, provided the guilty party is able to escape beyond the jurisdiction of the court before service of process upon him or her. This vexed question, in all its aspects, has been the subject of much diversity of judicial judgment in the various States of the Union; but I think it may now be considered as settled by the great weight of authority in conformity with the view just expressed."

Due constructive service was made in this case.

The record shows that on the ninth day of August, eighteen hundred and ninety-seven, a summons was issued out of the

North Dakota Court addressed to the defendant Mrs. Streitwolf. It shows the return of the Sheriff of Morton County, North Dakota, dated August 10th, 1897, certifying that he received the summons and complaint on the ninth day of August, eighteen hundred and ninety-seven; that he had made due and diligent search for the defendant and was unable to find the defendant within his county; that on the tenth day of August, the plaintiff made affidavit that the summons and complaint in the action, duly verified, were filed with the Clerk on the tenth day of August. That the action was brought by the plaintiff against the defendant for an absolute divorce; that the defendant did not reside in North Dakota nor had she been within the State since the commencement of the action and that he knew that she was a resident of the State of New Jersey and that personal service could not be made upon her for the reasons before stated; and that the summons and complaint had been placed in the hands of the sheriff of the county with directions to serve the same; and setting forth the return of the sheriff and that the plaintiff had stated the facts to his attorney and that the defendant was a necessary and proper party to the proceedings. And also sets out the affidavit of Charles A. Oliver, showing personal service on the seventeenth day of August, eighteen hundred and ninety-seven, of the summons and complaint upon Mrs. Streitwolf in the city of Jersey City.

Afterwards the record recites as follows:

This cause coming on to be heard before the Court this 7th day of October, 1897, and it having been made to appear to the satisfaction of the Court from the records and files herein that the original complaint in this action, duly verified, was filed with the clerk of this Court on the 10th day of August, 1897, and that the affidavit of the plaintiff setting forth among other things that the defendant is a non-resident of this State and that personal service of the summons and complaint in this action cannot be made, was filed with the Clerk of this Court on the 10th day of August, 1897, and that the summons in said action together with the Sheriff's return endorsed thereon to the effect that after due and diligent search and inquiry the defendant could not be found in this State was

filed with the Clerk of this Court on the 10th day of August, 1897, and that thereafter said summons and complaint were personally served on the plaintiff out of the State, as required by the laws of this State, and that the defendant has failed to answer the plaintiff's complaint or demur thereto, or in any manner to enter an appearance therein, within the time required by the laws of this State.

And again in the judgment of the Court the same recitals are made and conclude in these words, "and that thereafter said summons and complaint were personally served on the defendant out of the State as required by law."

The Court of Dakota followed the law of that State as contained in the Revised Code of North Dakota, 1895, with reference to substituted service, such statutes being offered before the Court of Chancery of New Jersey in behalf of Mr. Streitwolf. A copy of the Statutes of North Dakota on the subject of substituted service is appended to this brief.

It is said in Galpin v. Page, 18 Wall. 350, that in proceedings under special statutory authority, where such proceedings are not according to the course of the common law or where general powers of the Courts are exercised over a class not within its ordinary jurisdiction upon the performance of prescribed conditions, the presumption of jurisdiction upon the performance of prescribed conditions will not attend the judgment of the Court, but the facts essential to the exercise of the special jurisdiction *must appear in such cases upon the record.*

In this case the facts do appear upon the record.

No question was raised as to the Statute of North Dakota concerning substituted service not being pleaded, nor was objection made on that ground when the Revised Statutes of North Dakota were offered in evidence in the Court of Chancery (R. 98).

In Woodward v. Bullock, 12 C. E. Green, 507, the Court of Errors and Appeals of New Jersey says:

> "But there is a point that was not in the brief of the counsel who argued the case before the Chancellor, nor presented for his consideration, which so seriously affects

the parties interested in this sale, that it demands the careful scrutiny of this court. This point was not purposely withheld, otherwise it would be instantly rejected; but it was overlooked until suggested here during the argument.

"It is sometimes said that this court, on appeal, will not permit parties to raise objections which they did not present to the court below, not only in justice to that court, but also to prevent surprise and abuse by reserving points expressly for further litigation. These results should always be guarded. But where the entire proceedings are before the appellate court for review, there can be no reason, where there is no intentional omission, and the parties have acted in good faith, why the whole case should not be examined and determined on appeal. It would cause needless delay and expense to send the cause back to the Chancellor for re-hearing upon the same pleadings and facts, when the result might be that the cause would be returned here for the further consideration of this court.

"In Beekman v. Frost, 18 Johns. 544-559, the reasoning on this subject is clearly stated. See also Murray v. Costar, 20 Johns. 604. Where a cause has been defended below, and comes up for review, and a point is made here which could not be obviated in the court below, by proof or amendment, this court ought not to refuse cognizance of such point."

The point was first made in the Court of Errors and Appeals. The Vice Chancellor was not confronted with it. Nor did he consider it. In his opinion (R. 125) he states:

"It is a serious question whether a service out of the jurisdiction can ever be the ground of a decree of divorce; and the only ground upon which it can safely be put is that of necessity, viz., that the party cannot get his rights without such service. That is the ground upon which I put it in the Felt case. But according to the Magowan case, as decided by the Court of Errors and Appeals, as I understand it, if the complainant in this cause, Mrs. Streitwolf, had appeared to the Dakota suit, it would not have prevented her from setting up here that there had been fraud practiced upon the Court in the matter of domicile."

If it had been made in the Court of Chancery, amendment would have been allowed instantly. No concealment of such a point would have been tolerated by the Appellate Court. The

Appellate Court would not consider it.

It is not necessary, however, to plead a statute of a foreign State to uphold the record of a foreign court when such record is exemplified under the Federal statute and sets out the steps taken to effect the substituted service, and concludes that such steps are "as required by the laws of this State" or "as required by law."

In a cause arising under this clause of the Constitution, the domestic tribunal will take judicial notice of the local laws of the State from which the record comes because their proceedings are subject to review in this Court, and since here the States are not regarded as foreign and their individual laws are officially noticed.

Ohio v. Hinchman, 27 Pennsylvania State, 479 (3 Casey).
Paine v. Insurance Co. 11 R. I. 411.
Rae v. Hulbert, 17 Ill. 572.
Carpenter v. Dexter, 8 Wall. 513.
Black on Judgments, Section 860.

The supplemental bill attacked the validity of the Dakota decree, and it was incumbent upon the person denying the jurisdiction to assert such denial by certain and positive averments and to negative every fact from which the jurisdiction might arise.

The supplemental bill admits the personal service upon Mrs. Streitwolf, but simply avers that the Court had no jurisdiction. This was not sufficient.

Black on Judgments, Section 902.

A plea negativing one means of notice, leaving others open, is insufficient (2 Am. Lead. Cases, 656). And so as to the allegations of a bill in equity.

Residence and domicile of the plaintiff in a divorce case is not a jurisdictional question.

A decree of divorce of one State when attempted to be used in another State may be attacked for lack of jurisdiction in the same way as a decree in any other case, but *residence* is no more a jurisdictional question than *marriage*. There is a distinction between the finding of a fact necessary to give jurisdiction and a decision that the Court has jurisdiction as a matter of law. Thus in Wanzer v. Howland, 10 Wis. 8, it is said:

> "If a court decides that it has power to try a cause and render judgment, which by law it has not, such decision does not give it the power. Its judgment may be questioned anywhere for want of jurisdiction; but if a tribunal is authorized to act upon a certain state of facts and also to try whether the facts exist, then if they are properly alleged before it and the parties are legally notified and have opportunity to contest them, the finding of such tribunal upon those facts would be the finding of a competent tribunal and ought to be conclusive until reversed in a direct proceeding.
>
> "I think there is a clear distinction between the finding of such facts and the decision of a court that as matter of law it has jurisdiction where it has none, because in the one case it has authority to try the facts and in the other it has no authority at all, although it decides that it has; and although the authorities upon this subject are full of uncertainty, this distinction is recognized and seems to me to rest upon solid reasons. It is recognized in Brodhead v. McConnell, 3 Barb. 187, and in Betts v. Bayley, 12 Pick. 582; and also in Brittain v. Kinnard, 1 Brod. and Bing. 432, which is the leading case upon the subject.
>
> "In that case the magistrate had jurisdiction to seize gun-powder in any boat on the River Thames. Under that authority he seized and condemned a vessel with masts which was admitted not to be a boat within the act. He was sued in trespass, but the court held his finding, that it was a boat, conclusive; and this case establishes what I believe to be the true rule, that although such facts have been treated as jurisdictional, yet that strictly speaking, they are not so, because, while conceding that the vessel seized was not a boat within the act, they yet hold that the magistrate had jurisdiction because he had power to decide

whether it was a boat or not, as a part of the offense charged that this power constituted the jurisdiction and not the actual fact.

"All suits and judicial proceedings are instituted to try questions of fact, and when they are instituted with proper allegations before a tribunal authorized to try them, it is not sound logic to say that the jurisdiction of this tribunal depends upon the actual existence of the facts alleged, and the neglect of this distinction growing out of the great strictness with which the proceedings of inferior tribunals have been regarded, has, I think, given rise to much confusion and inaccuracy and has lead courts in many instances to hold facts jurisdictional which were not so.

"The true rule would seem to be, in all cases, that where the allegations are so made that the tribunal has authority to proceed and try them and to render judgment according to its finding, it has then jurisdiction of the subject matter. I have thus alluded to what I consider to be the true rule in respect to such so called jurisdictional facts for the purpose of showing that even if the existence of the judgment here had been such a fact, it was still competent for the court below to have tried and determined it conclusively unless directly reversed, and that therefore, it was triable by the same rules that govern the trial of all other questions."

And so where the jurisdiction of a Court depends upon a fact which it is required to ascertain and determine by its decision, its finding of that fact showing it has jurisdiction is conclusive on collateral attack.

Works Courts and their Jurisdiction, page 127.
Wells on Jurisdiction, Section 61.
Freeman on Judgments, Section 522.

This is placed upon the ground that the action of the Court in ascertaining and deciding the fact necessary to give it jurisdiction is itself an exercise of jurisdiction, and therefore, its decision upon this point, like any other, *is conclusive against a collateral attack.*

In the case of Joseph W. Plume v. Howard Savings Institution, in New Jersey Supreme Court, 17 Vroom, 211, was a suit by an administrator, and the question was whether it could

be shown as a defense to this suit that the letters of administration were invalid because the intestate was not in fact dead. The late Chief Justice Beasley, delivering the opinion of the Court, says:

> "Looking at the foregoing statement of facts, it is manifest that the Orphans' Court, on the occasion in question, had jurisdiction of the subject involved in the application for authority to administer the estate of Philip McMahon as that of a deceased intestate. Such matter was as actually before that tribunal for its adjudication as it was possible for it to be. We might perhaps have doubt whether the court deduced the correct conclusion from the testimony before it as to the fact of the death of the alleged decedent, or as to its right to grant administration, under the conditions of the case, to the plaintiff, but it seems illogical to deny the *power* of the court to take cognizance of the affair and to proceed to judgment. In the case of Grove v. Van Duyne. 15 Vroom, 654, the test of jurisdiction, so far as relates to courts having a general cognizance over a class of cases, was declared by the Court of Errors to be the colorable presentation before it of the facts necessary to constitute the case a member of such class. In the present case there was plainly some proof of the death of the supposed intestate, and likewise of the fact that he was not, at the time of his decease, a resident of this State, and therefore, even if the court fell into error, which I do not intend to indicate, such error might have led, in a proper course of law, to a reversal of the judgment, but it can have no bearing against the right of the court to adjudicate upon the facts before it. Upon this assumption, that this power of judicature existed, it is apparent that the defendant in this instance must stand on the proposition that he has a right to show that the Orphans' Court decided incorrectly with respect to the *evidence relating to jurisdictional facts.* But such a contention is opposed to fundamental rules of law. If its correctness were admitted, it would at once degrade the judgments of the higher courts of the State to the subordinate rank of official procedures of a special character by statutory authority. For example, on such a theory a judgment of this court might be overthrown when put to the touch in a collateral proceeding, on the ground that the court erred in deciding on the facts before it that the defendant in the suit had been summoned, when in point of fact he had not received any notice of the action."

Chief Justice Green of New Jersey, in Perrine v. Farr, 2 Zab. 356, defines jurisdiction simply as "power," and this Court in the United States v. Arredondo, 6 Peters, 691, has defined it to be "the power to hear and determine."

Jurisdiction does not depend upon *ascertained* facts or the *actual existence* of matters and things, but it does depend upon the *allegations* made concerning things. If a certain state of facts is alleged to be true and an action be instituted for relief concerning them, in a tribunal which has the power to grant the relief prayed for, if the facts be true, that gives to that tribunal complete jurisdiction over such action. The allegations may not be true, the facts may have no actual existence, yet that does not oust the tribunal of its jurisdiction. A wrong determination of the existence of the facts by the court is error, but that can be re-examined only on appeal.

Jurisdiction depends upon the allegations and not upon the facts. The truth of the allegations does not constitute jurisdiction.

See Cook v. Bangs, 31 Fed. Rep. 640, where Mr. Justice Brewer delivered the opinion.

See also Van Vleet's Collateral Ataack, Section 60, page 73, *et seq.*

In Smith's Leading Cases, Vol. 1, Part 2, Sixth American Edition, page 1001, it is said:

> "The doctrine thus held, that the adjudication of a superior court upon a question within the general scope of its powers, is conclusive with regard to all the special facts necessary to render the exercise of those powers legitimate, is not only consistent with all legal analogy, but essentially necessary to the proper administration of justice. It has, indeed, been said, that since jurisdiction is necessary to give the right to adjudicate, the adjudication cannot be used as proof of the jurisdiction, without reasoning in a circle. But this argument hardly makes up in logic for what it wants in practical wisdom, and is open to the objection of assuming the point in dispute, as one of the premises on which to found the conclusion. When a complaint or allegation is laid before a judge or magistrate, which it is his duty to hear and investigate, he must necessarily proceed to determine whether it is sustained by the

facts, and having once obtained jurisdiction for this purpose, his decision must have the quality of every judicial decision, and be final. Although the authority of courts of justice is essentially a limited and delegated authority, it carries with it the right to determine when and where it shall be exercised, and whether the facts of each particular case are such as to admit of its exercise. If the case be necessarily and essentially beyond the authority of the tribunal which attempts to decide it, the defect will appear either on the face of the decision, or as soon as an attempt is made to carry it into execution, and the whole proceeding be manifestly and essentially void. But when the case is prima facie within the jurisdiction of the court, the judgment will be as conclusive upon the question of jurisdiction as upon any other question in the cause. One of the attributes of the judgments of superior courts is to suffice for their own support, and be in themselves proof that the powers of the court have been properly exercised." Citing cases.

Therefore when Mr. Streitwolf entered his action in North Dakota, alleging his residence therein in his complaint, the Court there having the general jurisdiction over the subject matter of divorce, that Court then became possessed of the jurisdiction or power to proceed and try the case and had the power to act upon and determine and adjudge whether the particular facts stated in such complaint were true or false and to grant relief accordingly.

The jurisdiction of the Court over the subject matter of divorce cannot be denied, nor that it was a Court of general jurisdiction. The record so proved it. The cases in this Court in which jurisdiction of the courts of sister States has been inquired into, have, in the main, and I may say with but a single exception, been confined to the question of the acquiring of jurisdiction over the defendant.

In no case, except that of Thompson v. Whitman, 18 Wall. 457, have the findings of the Court been overhauled.

In this case the Court permitted the recitals of a special statutory tribunal composed of two Justices of the Peace in the State of New Jersey to be overcome by evidence in the Court of a sister State.

In reading this case we are to distinguish between the effect

of the recitals contained in the record of a court of limited jurisdiction and the findings of fact set out in the record of a court of superior or general jurisdiction.

In Wyatt's Administrator v. Rainbo, 29 Alabama, 510, it is said:

> "If a court of limited jurisdiction is charged with the ascertainment of jurisdictional facts and its proceedings show that these facts were ascertained, they cannot be denied because the making of the jurisdiction of the court depends upon a preliminary fact, implies authority to ascertain that fact. A misapprehension of this principle doubtless led the court in Wyatt's Administrator v. Stelle into a position that the exercise of a jurisdiction dependent upon a preliminary fact, implies the ascertainment by the court of that fact."

In the case under consideration, however, we have the record of a Court of general jurisdiction in which specific findings of fact are set out (R. 49), as follows:

> "The plaintiff now is and for more than ninety days prior to the commencement of this action has been, in good faith, a resident of the State of North Dakota."

And again in the decree (R. 51), as follows:

> "And the cause having been submitted to the Court for decision and the court having given due consideration to all the matters and evidence brought before it in relation to said cause, did make and file its findings of fact and conclusions of law herein, wherein and whereby it was found and determined . . . that the plaintiff has been a resident in good faith of this State for such a time as to entitlee him to bring, and is now entitled to maintain this action, etc."

This then is a finding of fact in the cause which might have been controverted by the defendant and which she had an opportunity to controvert.

In the Peoples v. McCaffrey, 75 Michigan, 115, the husband filed a bill for divorce in Michigan and made an affidavit that

he had been a resident for a time named; he was then prosecuted for perjury in swearing to his residence. In this prosecution, he claimed that the divorce Court had no jurisdiction because he did not in fact reside in that State and the affidavit was therefore not perjury, but it was held that the Court did have jurisdiction, and he was convicted.

To the same effect is Kinnier v. Kinnier, 45 N. Y. 535, in which an attempt was made to attack an Illinois decree in the State of New York because the plaintiff was not actually a *bona fide* resident of that State. The Court said:

> "It is conceded he was there, appeared in that court and filed his bill and took the decree. The question whether he was a resident then so as to enable him to file his bill was for the court to determine, and although it may have decided erroneously, the decision cannot affect the validity of the judgment. The status of all persons within a State is exclusively for that State to determine for itself . . . . Sufficient facts are alleged to give the Illinois court power to decide the question of domicile, and the judgment is not void, if we concede that the decision was erroneous and if it is also conceded that the question of residence is vital to give jurisdiction. A wrong decision does not impair the power to decide or the validity of the decision when questioned collaterally."

And so do the Courts of the State of New Jersey hold, with the exception that such a decree could be impeached if procured by fraud, of which point we will speak later on.

In McGowan v. McGowan (Court of Errors and Appeals), 12 Dick. Chancery 322, it was held:

> "Where the plaintiff in a suit for divorce is required by statute to have been a bona fide resident of the State in which his suit is brought for a fixed period of time, in order to enable him to maintain his suit, the ascertainment by the court of the fact of such residence necessarily precedes a consideration of the merits of the case, and the determination of that question by the court is final not only in the courts of that State but in every other jurisdiction where the validity of the judgment comes in question, unless such determination has been procured by fraud. When however, the adjudication has been procured by fraud it

is without extraterritorial effect, and the judgment will be treated as void in the courts of a sister State."

In Van Vleet on Collateral Attack, page 377, Sec. 389, commenting on Thompson v. Whitman, 18 Wall. 457, it is said:

"The general principle established by this case is, that a record from another State when offered in evidence may be contradicted on any jurisdictional question of fact, and the specific question decided was, that it might be contradicted in respect to the place where the property sequestrated by it was seized. This case overturns the law as it then stood, and, in my opinion, is untenable on principle. That court, more than half a century before, had decided the specific question the other way. Thus, where a vessel had been condemned by a French prize court at Guadaloupe, it was contended in a federal court that the condemnation was void because the vessel was taken on the high seas and not within the jurisdiction of France; but the Supreme Court of the United States said: 'Although it be now stated, as a reason why we should examine whether a jurisdiction was rightfully exercised over The Sea Flower, that she was captured more than two leagues at sea, who can say that this very allegation, if it had been essential, may not have been urged before the French court, and the fact decided in the negative? And, if so, why should not its decision be as conclusive on this as on any other point? The judge must have had a right to dispose of every question which was made on behalf of the owner of the property, whether it related to his own jurisdiction, or arose out of the law of nations, or out of the French decrees, or in any other way.'

"The general principle involved was decided the other way in 1861. The French and Dutch were at war, which gave French prize courts the power to condemn Dutch ships; and where a French prize court condemned and sold a ship as Dutch, and the purchaser took her to England, where the former owner sued him in trover on the ground that she was an English ship over which the French court had no jurisdiction, it was held to be incompetent for him to contradict the French record on that question of fact. This case was followed in an early case in the Supreme Court of the United States, where it was decided that the record of a foreign prize court could not be contradicted by showing that the vessel did not, in fact, attempt a breach of blockade. If it be said that these were decisions of prize

courts, I answer, so was the New Jersey case; and I ask, why put the judgment of a prize court on a different foundation from that of any other court? The judge of that court is sworn to hear the evidence, and from that to find the facts, and then to apply the law, and that is precisely what all judges of all courts are sworn to do. The duty being the same, unless we are to disregard principle, the final judgments must be accorded the same force. But suppose the owner of the vessel in the New Jersey case had appeared and contested the question as to the place where it was seized being in Monmouth County, and had been defeated; and suppose he had then carried it to the Court of Common Pleas and there been defeated again; and then to the Supreme Court, and then to the Court of Errors and Appeals, and had been defeated on the merits in all the courts of New Jersey, would that have barred his rights to retry the same question in New York? To hold that it would, would demonstrate that the Supreme Court confounded the doctrines of *res judicatta* and collateral attack . . . because he had the opportunity to make that contest in the New Jersey courts. The principle involved here is not the same as that involved in the contradiction of service. . . . If a case ever comes before the Supreme Court of the United States, for instance, where a person who has been convicted and imprisoned for crime sues the sheriff in another State for false imprisonment, and offers to show that he committed the crime in a county other than that in which he was tried, the court will have to hold his evidence competent, and thus give him two days in court on that question, or overrule Thompson v. Whitman, because in that case the owner of the vessel first had his day in court in New Jersey, and then again in New York."

Thompson v. Whitman has in effect been disregarded if not overruled by this Court.

In re Cooper, 143 U. S. 472.

The question was whether a seizure had been made within the jurisdiction of the Court.

And the opinion says: "Upon the face of the libel and findings if the jurisdiction did not extend beyond three miles from shore, the legal inference is that the offense and seizure was within that limit . . ." The Court had power to inquire into the fact upon which jurisdiction depended, and its maintenance of jurisdiction involved the conclusion necessary to sustain it.

If therefore the findings of fact are properly part of the face of the proceedings the want of jurisdiction not only does not appear, but the contrary."

Erwin v. Lowry, 7 How. 172, is similar in effect.

Says Van Vleet, Col. Attack, Section 17:

> "Much confusion has resulted by applying the doctrine of *res judicata* to cases of collateral attack. . . .The doctrine of collateral attack denies any validity whatever to the former adjudication, while that of *res judicata* admits its entire validity and simply denies the scope claimed for it. There is little similarity between the two doctrines Collateral attack involves the jurisdiction of the court, and denies its power to act at all, while *res judicata* merely involves the question concerning what was actually contested and decided on the trial. The doctrine of collateral attack has nothing to do with the issues or the matters contested on the trial."

The present case is one of collateral attack. The fact of domicile was found by the Court *after jurisdiction to hear and determine it had attached by the allegations of the complaint.*

The fact of domicile was therefore not jurisdictional, but a mere fact put in issue by the pleadings, to be decided as any other fact.

As the existence or non-existence of this fact was determined by the Court, so the Court would be bound in its rendition of judgment.

The Court duly decided in this case the domicile of the defendant to be in North Dakota.

Residence in the statutes of that State means domicile as construed by the Courts of that State.

> Smith v Smith, 7 N. D. 404.
> Graham v. Graham, 81 N. W. Rep. 44.

In the latter case the Court says: "It has been held by this Court and is now a well settled rule of statutory construction that the word 'residence' in statutes giving jurisdiction is interpreted to mean the same as 'domicile.'"

Domicile is a question of fact. It must be determined by

proof. There must be a tribunal to decide. What tribunal? It is said no tribunal except that of the domicile. How then and by whom shall the preliminary question be decided? It is said that the status of a person is local to his domicile, hence the Courts of the domicile alone can declare it. Admit it. It is then contended that Mr. Streitwolf was not domiciled in North Dakota; therefore the Court of that State had not power to say that he was. His wife then brings the controversy into the Courts of New Jersey to ascertain the domicile of her husband. But where is derived the power of the New Jersey Courts to determine the question until first it shall have been ascertained that New Jersey is the State wherein he is domiciled? It must be remembered that the question in each State is the domicile of the husband, not of the wife, which is to be decided. The appearance of the opposing party could not confer jurisdiction.

"Consent of parties cannot confer jurisdiction on the Court in relation to a matter excluded by law." (2 Bishop M. & D. Section 151.)

If the case of Thompson v. Whitman is allowed to govern in this respect, and the insistment of Mrs. Streitwolf prevails, we have the anamolous and confusing posture of affairs in which the conclusions of the North Dakota Court are overturned by the Court of another State which has itself in like manner assumed to adjudicate not only the question of domicile, but to pronounce the former adjudication to be null. And where shall this controversy be finally and conclusively ended and authoritatively determined? What Court can be said to possess the jurisdiction.

In the case in hand the uncontroverted testimony is that Mr. Streitwolf abandoned his residence and domicile in New Jersey and acquired one in New York before he finally acquired one in North Dakota. Therefore if he was not a citizen of North Dakota, he would be of New York.

Is then the New Jersey Court competent to decide the question, or shall New York do so?

It is therefore respectfully submitted that the true rule is as before stated, namely, that the *fact* of domicile is not jurisdictional, but the *allegation* of domicile is, and that after such al-

legation made the Court in which it is made becomes clothed with jurisdiction to try the fact as any other fact in issue is tried, and that its conclusion made thereon is final, because made by a tribunal having jurisdiction, and such determination is unimpeachable on collateral attack.

The North Dakota Court therefore had jurisdiction, and possessing that power its conclusion on the merits of the case cannot be opened or retried.

The judgments of the Courts of a Sister State are not re-examinable upon the merits.

Where jurisdiction of the Court depends upon a fact which such Court is required to ascertain and determine from evidence outside of its records, its finding of such fact is conclusive as against a collateral attack, not only in the State where the judgment is rendered, but in every other State.

Works, Courts and their Jurisdiction, page 144.

The ascertainment of this fact is one of the merits of the case.

"The judgments of sister States when authenticated under the Federal Constitution are not merely *prima facie* evidence. Common Law would give them that effect. The Constitution contemplated a power in Congress to give a conclusive effect to such judgments, and such is the rational interpretation of the Act of Congress."

Mills v. Duryee, 7 Cranch, 481.

Judgments rendered in one State of the Union when proved in the Courts of another differ from judgments recovered in a foreign country in no other respect than that of not being re-examinable upon the merits, nor impeachable for fraud in obtaining them, if rendered by a Court having jurisdiction of the case and of the parties.

Hanley v. Donoghue, 116 U. S. 1.
Wisconsin v. Pelican Ins. Co. 127 U. S. 265.
Union Trust Co. v. Southern Inland Nav. & Imp. Co. 130 U. S. 565.

The judgments of the Courts of a Sister State are not impeachable for fraud in obtaining te m.

The grounds upon which the decree in the Court of Chancery of New Jersey was made are thus expressed by the Vice Chancellor in his opinion (R. 124), and this opinion was adopted by the Court of Errors and Appeals as the opinion of the latter Court (R. 147).

The opinion of the Vice Chancellor on this point is in these words:

"If there was a *bona fide* domiciled residence in that State of North Dakota—if Streitwolf went there as any man would go, entirely independent of the question of a desire to get a divorce, if his going there and his adoption of a domicile was thorough and actual—the mere fact that he expected to have the benefit of the laws of the State for a divorce against his wife may not destroy the value of that domicile for present purposes.

"But the fact that he did not go there for that purpose has an effect upon the human mind in determining whether or not, upon all the facts, his residence was *bona fide* so as to establish a domicile or not; and that is the very point in the case."

And then after reviewing the evidence he sums up his conclusion in these words:

"Therefore I hold that the evidence satisfies me that there was no *bona fide* domicile in North Dakota, and that the obtaining of a divorce on the ground of domicile was a fraud on the Court, and entitled the complainant herein to a decree that it shall not constitute a defense to her suit.

"I think this result is clearly within the ruling, not yet reported, of the Court of Errors and Appeals in Magowan v. Magowan, reversing this Court as reported in 39 At. R. 364. There the defendant appeared to the suit."

The New Jersey Courts therefore placed the decision directly upon the ground of fraud in obtaining the judgment.

The Magowan case quoted by the Vice Chancellor has been hereinbefore referred to and an extract made from it.

> In the case of Christmas v. Russell, 5 Wallace, 290, it is said, judgments of the courts of sister States "are open to inquiry as to the jurisdiction of the court and notice to the defendant, but in all other respects they have the same faith and credit as domestic judgments."
>
> In Hilton v. Guyot, U. S. 113, pages 184-185, the effect of a judgment of one State in another is discussed and it is declared that "judgments in another State are not re-examinable on their merits nor impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties."
>
> See also Kansas City Railroad v. Morgan, 76 Fed. Rep. 429 (435) where this last case is quoted.
>
> Also Thurston v. Thurston (Minn.) 9 N. W. 1017; Kern v. Field (Minn.) 71 N. W. 393.

Divorce being a proceeding in rem, the status determined by decree in rem is binding on the whole world.

It was insisted that the service of the defendant being constructive, the decree would not operate out of the jurisdiction of North Dakota, but it is submitted that taking the most unfavorable view to Mr. Streitwolf, the decree of North Dakota operated upon his status regarding his marital relation. His status was declared by the Court of that State. The status of a thing is inseparably connected therewith. If property located in North Dakota owned by a citizen of New Jersey, had been forfeited or the title thereof changed by a proceeding *in rem* and such property afterward came into the State of New Jersey, the former owner thereof could not claim the title thereto because of the adjudication *in rem*. So in this proceeding, Mr. Streitwolf's status has been determined, and it so remains determined when he enters the State of New Jersey, and if the judgment of the North Dakota Court is protected by the constitutional provision concerning full faith and credit,

and we contend that it is, then it is incompetent for the New Jersey Court to say that Mr. Streitwolf is not a single man. And if the New Jersey Court attempts to divest him of this status, it is not giving that full faith and credit to the foreign decree which it receives in the jurisdiction where rendered.

It will be noted that the decree of the Court of Chancery holds the North Dakota decree *wholly void* and of *no effect*, and enjoins Mr. Streitwolf from relying upon the said decree not only in the suit then pending by his wife against him upon the original bill, but also *in any other suit or proceeding whatsoever at law or in equity.*

All *judicial proceedings* are within the constitutional protection.

In People v. Baker, 76 N. Y. 78-85, Mr. Chief Justice Folger said:

> "It is said that a judicial proceeding to touch the matrimonial relation of a citizen of a State, whether the other party to that relation is or is not also a citizen, is a proceeding in rem, or, as it is more gingerly put, quasi in rem. But it was never heard that the courts of one State can affect in another State the rem there, not subjected to this process, and over the person of the owner of which no jurisdiction has been got. Now, if the matrimonial relation of the one party is the res in one State, is not the matrimonial relation of the other a res in another State? Take the case of a trust, the subject of which is lands in several States, the trustees all living in one State. Doubtless the courts of a State in which the trustees did not live and never went, but in which were some of the trust lands, could proceed in rem and render a judgment without personal service of process, which would determine there the validity of the trust and affect the possession and title of the lands within the jurisdiction of those courts; but it would be contended, that the judgment would operate upon the trustees or upon the lands, in other States, so as to affect the title, or the possession, in those States. It would operate only on the rem, upon which the process of those courts could lay hold. And why is not the matrimonial relation of a citizen of New York as it exists in that State, if it is a res as much exempt from the effect of such a judgment as lands in that State, and the trusts under which they may be held?"

The fallacy in the reasoning in the above case, it seems to me, is the fact that the learned Judge has chosen an immovable subject, namely, "Land," to illustrate his position, but the *res* in divorce being the status of the person, whenever such person passes from one State to another, his status as determined must accompany him.

If we admit that the decree is *in rem* then the judgment must be binding everywhere or else void everywhere.

See in this connection, Bishop on M., D. & S., Vol. 2, Sec. 137 and 153.

Greenleaf on Evidence, Sec. 525.

The status of Mr. Streitwolf has therefore been definitely settled, and the decree of any State Court which adjudges otherwise is in violation of the constitutional provision and the statute passed thereunder, and is a deprivation of a right guaranteed to Mr. Streitwolf thereby.

The declaring *null and void* of this decree is not giving full faith and credit to the constitutional command, for this provision is mandatory, and the slightest invasion or diminution of the right of a suitor claiming the benefit thereof, is a violation, and will constitute error in the Court which denies to any judgment the full force and effect which it has in the jurisdiction where renedered.

It is submitted therefore:

1st. That the North Dakota Court had jurisdiction of the matter of divorce.

2nd. That it had jurisdiction of the plaintiff therein by the filing of his complaint with the allegations therein contained.

3rd. That it obtained jurisdiction of the defendant by the personal service upon her of process in conformity with the laws of said State.

4th. That it duly adjudged that the plaintiff had a *bona fide* domicile in North Dakota.

5th. That the adjudication of such fact is final and cannot be attacked collaterally.

6th. That the judgment being rendered by a Court having jurisdiction of the subject matter and of the *res*, cannot be at-

tacked collaterally for fraud in procuring it, or upon the merits.

7th. That by such adjudication the status of the plaintiff was finally determined and the marriage with the defendant dissolved.

8th. That such adjudication is within the protection of Article IV, Section 1 of the United States Constitution, and of Section 905 of the Revised Statutes of the United States.

9th. That such decree being effectual in North Dakota, to determine the status of the plaintiff with respect to the marriage relation must be accorded the same effect in New Jersey.

10th. That divorce being a proceeding to fix the status of the married person domiciled within the State, is a proceeding *in rem*, and the status thus determined by a decree *in rem* is binding on all the world.

11th. That the New Jersey Court, by reason of the Federal Constitution, is without power to "order, adjudge and decree that the said judgment or decree so as aforesaid entered in said cause in the said District Court of the Sixth Judicial District in and for the County of Morton, and State of North Dakota, is wholly void and of no effect," and that said New Jersey Court is also without power to order, adjudge and decree that August Streitwolf "be and he hereby is perpetually enjoined from setting up against her or in any manner relying upon the said judgment or decree in the suit now pending by the said Elizabeth Streitwolf against him upon the original bill in this cause, or in any other suit or proceeding whatsoever at law or in equity."

The judgment therefore should be reversed.

WILLARD P. VOORHEES,
ROBERT ADRAIN,
Of Counsel with Plaintiff in Error.

Statutes Concerning Substituted Service.

5254. *Service by Publication. Cases and Manner.* Service of the summons in an action may be made on any defendant by publication thereof upon filing a verified complaint therein with the clerk of the district court of the county in which the action is commenced, setting forth a cause of action in favor of the plaintiff and against the defendant, and also filing an affidavit stating the place of defendant's residence, if known to the affiant, and if not known, stating that fact, and further stating:

1. That the defendant is not a resident of this State; or,

2. That the defendant is a foreign corporation, joint stock company or association and has no agent or person in this State upon whom service may be made under the provisions of section 5252; or,

3 That the personal service cannot be made on such defendant within this State to the best knowledge, information and belief and of the person making such affidavit, and in cases arising under this subdivision the affidavit shall be accompanied by the return of the sheriff of the county in which the action is brought, stating that after diligent inquiry for the purpose of serving such summons he is unable to make personal service thereof upon such defendant.

The affidavit shall also state or the complaint show:

1. That the defendant has property within this State or debts owing to him from residents thereof; or,

2. That the defendant is a resident of this State and has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself secreted therein with a like intent; or,

3. That the relief sought in this action consists wholly or partly in excluding the defendant from any interest in or lien upon specific real or personal property within this State, or in enforcing, regulating, defining or limiting such interest or lien in favor of either party to the action; or otherwise affecting the title to such property; or,

4. That the action is for divorce or for a decree annulling a marriage; or,

5. That the defendant in any of the cases mentioned in the last preceding subdivisions 1, 2, 3 and 4 is unknown to the plaintiff.

5255. *Number of Publications.* Service of the summons by publication may be made by publishing the same six times, once in each week for six successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county, then in a newspaper published at the seat of government of this State.

5256. *Mailing Summons and Complaint.* A copy of the summons and complaint must within ten days after the first publication of the summons be deposited in some post office in this State, postage prepaid, and directed to the defendant to be served at his place of residence, unless the affidavit for publication states that the residence of the defendant is unknown.

5257. *Personal Service Equivalent to Publication.* After the affidavit for publication and the complaint in the action are filed, personal service of the summons and complaint upon the defendant out of the State shall be equivalent to and have the same force and effect as the publication and mailing provided for in this chapter.

5258. *Time When Service Must be Made.* The first publication of the summons or personal service of the summons and complaint upon the defendant out of the State must be made within sixty days after the filing of the affidavit for publication; if not so made, the action shall be deemed discontinued.

5259. *When Service Complete.* Service by publication is complete upon the expiration of thirty-six days after the first publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the State, upon the expiration of fifteen days after the date of such service.

5260. *When Defendant Permitted to Defend.* The defendant, upon whom service by publication is made or his representatives, on application and a sufficient cause shown at any time before judgment, must be allowed to defend the action;

and except in an action for divorce the defendant, upon whom service by publication is made or his representatives, may, in like manner upon good cause shown, be allowed to defend after judgment, or at any time within one year after notice thereof and within seven years after its rendition on such terms as may be just; and if the defense is successful and the judgment or any part thereof has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs; but the title to the property sold under such judgment to a purchaser in good faith shall not threby be affected.

5262. *Proof of Service. Acceptance.* Proof of the service of the summons and of the complaint or notice, if any, accompanying the same, must be as follows:

1. If served by the sheriff or other officer, his certificate thereof; or,

2. If by any other person, his affidavit thereof; or,

3. In case of publication an affidavit made as provided in Section 5263 of this code and an affidavit of a deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or,

4. The written admission of the defendant.

In cases of service otherwise than by publication the certificate, affidavit or admission must state the time, place and manner of service.

5264. *Jurisdiction. Appearance.* From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of a defendant is equivalent to personal service of the summons upon him.

Sec. 22. That the printed statute-books and pamphlet session laws of any of the United States, printed and published by the direction or authority of such State, shall be received as evidence of the public laws of such State, in any court of this State; and the court may determine whether any book or pamphlet, offered as such, was so printed or published, either from inspection, or the knowledge of the judge or judges, or from testimony; and no error shall be assigned for the rejection of any book or pamphlet, offered as such, unless it be proved on error that such book or pamphlet, is received as a statute-book or pamphlet containing the session laws of said State, in the courts of such State whose statute-book or pamphlet containing the session laws, it purports to be; nor shall any error assigned for the admission of such book or pamphlet be sustained, unless it be shown in support thereof, that the statute offered in evidence or some material part thereof, was not in force in such State at the time of the transaction or matter to which it was offered as pertinent or material.

[illegible]

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 109.

AUGUST STREITWOLF, Plaintiff in Error,

vs.

ELIZABETH STREITWOLF,

Defendant in Error.

[illegible]

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 109.

AUGUST STREITWOLF, PLAINTIFF IN ERROR,

vs.

ELIZABETH STREITWOLF, DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR IN REPLY.

On page 4 of defendant's brief the case of *Grover & Baker Sewing Mch. Co. vs. Radcliffe* is cited. The inquiry there was as to the domicile of a corporation. This was with reference to the proper service of process, which under the cases, it is admitted, can be inquired into.

The reason for the right to contradict the fact of service of process, and in the case cited the domicile of the corporation, appears to be that such fact is not put in issue by the pleadings; that proof of service is a mere incidental fact and not an issue in the cause; that it could not be controverted without an appearance by the defendant, which appearance would *ipso facto* put an end to the question as to the jurisdiction over the defendant.

Not so, however, is the fact of domicile of the plaintiff. That is alleged in the pleading or declaration and is a fact

to be proved in the case before judgment can pass, and is one of the issues tendered in the cause which the court is bound to decide.

There exists no other tribunal for the settlement of this fact.

It is also said (p. 4) that residence alone enables the court to dispense with service within the territorial jurisdiction of the court.

If adjudged residence must precede the issue of process to be constructively served, then such process could never issue, nor could the determination of residence be effectively adjudged until such process had been issued and returned.

It is submitted that on the facts of the case the finding of the court of North Dakota as to domicile is not without proper and firm support. The evidence is such that a court, to put it in its most unfavorable aspect for Mr. Streitwolf, might decide either way.

The quotation on page 11, that the domicile must be "*free from suspicion*," is manifestly bad law. It must be the domicile or not.

On page 14 the proposition is advanced by counsel that a decree for divorce may be operative within and inoperative without the jurisdiction. Let this be admitted, then the decree of the New Jersey court has not given the Dakota decree that faith and credit which the Constitution requires. It has adjudged that the Dakota decree is wholly void. Assuming that it was originally valid in North Dakota, then the parties, having appeared in the New Jersey suit, are concluded by the findings of the New Jersey court, even in North Dakota. In the event that Mr. Streitwolf was the owner of lands there and desired to sell them, he would

have a right to do so free from his wife's inchoate dower, because the North Dakota decree had dissolved the marriage; but the New Jersey decree would prevent him from asserting or claiming any benefit of the North Dakota decree. So the New Jersey court has failed to give the foreign decree the full faith and credit which it is entitled to receive, and has deprived Mr. Streitwolf of his constitutional right.

In any event, the New Jersey court has decided too much and its decree is too far-reaching. (See Judge Pryor's very forcible remarks in *Davis vs. Davis, 2 N. Y. Miscel. Rep., 549.*)

There can be no diminution of Mr. Streitwolf's constitutional right, no matter how small. The New Jersey decree has not acknowledged the foreign findings, even to the extent of being good in its own territory.

On page 18 defendant contends that the marriage relation is a *joint status of two persons*, and must be dealt with as an entirety.

The cases are clear that husband and wife may have separate domiciles. If, then, the State has the right to declare the status of its citizens and not the status of the citizens of another State, divorce is impossible if the domiciles are separate. So counsel would have it. But it amounts practically to a denial of the State's rights in regard to its citizens. In support thereof he states: "There cannot be a husband without a wife," &c. That is conceded.

But, from the very nature of the relation, the argument operates against him, because the jurisdiction of the State cannot be gainsaid from the fact that it may incidentally reach beyond the territorial limits thereof.

It cannot be said that the State's power is gone, because of necessity it reaches beyond its limits of territory.

The language of the Constitution is broad enough to cover suits in divorce.

Why should they, by construction, be left out of its reach?

Its design was to promote uniformity (*Huntington vs. Attrill, 146 U. S., 684*).

Surely no subject requires uniformity and certainty more than divorce. It should not be trusted to the caprice of comity. This court should settle the question.

WILLARD P. VOORHEES,
ROBERT ADRAIN,
Counsel for Plaintiff in Error.

No. 109.

Br. of Strong for D. E.

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Supreme Court of the United States.

October Term, 1900.

AUGUST STREITWOLF, *Plaintiff in Error,* v. ELIZABETH STREITWOLF, *Defendant in Error.*	In Error to the Court of Errors and Appeals of New Jersey.

BRIEF OF ALAN H. STRONG,

For Defendant in Error.

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The original bill in the Court of Chancery of New Jersey was filed by Elizabeth Streitwolf against August Streitwolf, her husband, for a divorce from bed and board.

Down to that time there is no question that both were domiciled at New Brunswick, New Jersey, where they had been married and had lived together nearly twenty years, where the husband owned considerable real estate and was established in the liquor business.

During the pendency of that suit the husband went, in May, 1897, to Mandan, North Dakota, and on August 9th, precisely three months from the day he first reached there, began a suit for absolute divorce in a District Court of that State, alleging in his complaint, as an inducement to that Court to assume jurisdiction of the cause, that he then was and for more than

ninety days immediately preceding the commencement of said action had been a resident in good faith of said State.

Copies of Summons and Complaint in said action were served on the wife at New Brunswick, New Jersey, where she had continued to reside, and thereupon she applied to the Court of Chancery by petition in the original cause for an injunction to restrain the prosecution of said suit in North Dakota.

An injunction was granted as prayed and service was made upon the attorneys of the husband in the North Dakota action and also upon his solicitor in the New Jersey suit in which the injunction was issued. Service upon the husband could not be made.

The suit in North Dakota, nevertheless, was proceeded with and decree entered therein, for an absolute divorce was granted to August Streitwolf on the seventh day of October, A. D. 1897, from the said Elizabeth his wife, she not having appeared nor being in any way subject to the jurisdiction of the Court.

A supplemental bill was then filed by the wife on January 11, 1898, charging that said August Streitwolf was not at the time of commencing his said suit or at any other time a resident in good faith of North Dakota, but that his pretended residence in that State at any time was wholly fictitious and fraudulent and designed only to give colorable jurisdiction to said Court for the purpose of said action, and praying that the decree or judgment so obtained by him in said District Court of North Dakota might be set aside, etc.

After hearing, a final decree was made on said supplemental bill November 18, 1898, reciting that it appeared that said judgment or decree in said District Court of North Dakota had been obtained by fraud and imposition upon said District Court and that said August Streitwolf was not at the time of commencing said suit or at any time prior thereto a resident in good faith of said State of North Dakota, and that said Court had no jurisdiction of said Elizabeth Steritwolf in said cause, and it was therefore decreed that said judgment or decree of said District Court is wholly void and of no effect, etc.

Said decree of the Court of Chancery of New Jersey declaring void the decree of the District Court of North Dakota,

having been duly affirmed upon appeal in the Court of Errors and Appeals of New Jersey, this writ of error is prosecuted to reverse said decree of affirmance.

I.

The Court of Chancery of New Jersey and the Court of Errors and Appeals on appeal might properly declare void the North Dakota decree if there was either lack of jurisdiction or fraud in its procurement.

"It is settled that notwithstanding the provision of the Con-"stitution of the United States, which declares that 'full faith "and credit shall be given in each State to the public acts, rec-"ords and judicial proceedings of every other State' (Art. IV, "Sec. 1), and the Act of Congress passed in pursuance thereof "(1 Stat. 22; Rev. Stat. parg. 905), and notwithstanding the "averments in the record of the judgment itself, the jurisdic-"tion of the court by which a judgment is rendered in any "State may be questioned in a collateral proceeding; that the "jurisdiction of a foreign court over the person or the subject "matter, embraced in the judgment or decree of such court, "is always open to inquiry; that in this respect a court of an-"other State is to be regarded as a foreign court; and that a "personal judgment is without validity if rendered by a State "Court in an action upon a money demand against a non-resi-"dent of the State, upon whom no personal service of a process "within the State was made, and who did not appear. D'Arcy "v. Ketchum, 52 U. S. 11 How. 165; Thompson v. Whitman, "85 U. S. 18 Wall. 457; Hall v. Lanning, 91 U. S. 160; Penn-"oyer v. Neff, 95 U. S. 714."

The above is quoted from the opinion of this Court in Grover & Baker Sewing Machine Co. v. Radcliffe, 137 U. S. 287. Also see Simmons v. Saul, 138 U. S. 439.

In Grover v. Baker Sewing Machine C. v. Radcliffe, 137 U. S. 187, it was held competent in a suit on a judgment of

another State to set up that the defendant was not domiciled in such State, that being material to the jurisdiction. No reason is perceived why the domicile of the plaintiff where jurisdictional may not equally be inquired into.

The question of "residence" (domicile) is not concluded by the recitals in the North Dakota decree.

2 Black on Judgments, Section 930.
1 Freeman on Judgments, Section 580.
Reed v. Reed, 51 Mich. 117.

Such recital is only conclusive when defendant has been regularly served with process within the State where the decree is rendered, or has appeared as in Fairchild v. Fairchild, 8 Dickinson, 679, and in each of the cases there cited, namely, Kirrigan v. Kirrigan, 2McCarter, 147; Nichols v. Nichols, 10 C. E. G. 63; Kinnier v. Kinnier, 45 N. Y. 540.

Where the Court has jurisdiction of the subject of divorce generally and of the person, it may be that the finding of residence is conclusive as the adjudication of any other material fact would be under such circumstances. (See In re Ellis Estate, 55 Minn. 401; Brick v. Brick, 65 Mich. 230.)

But where there is no regular service of process nor any appearance, the question of complainant's residence (always meaning *domicile*) is one that enters into the question of jurisdiction of the person of the defendant. In such cases (adopting the most advanced contention in support of the decree) it is the fact of the complainant's residence alone which enables the Court to dispense with service of process within its jurisdiction and proceed upon a substituted or foreign service.

Domicile of the complainant within the jurisdiction is a condition to the validity of service made out of the jurisdiction, hence the question of domicile must be open to inquiry when the decree dependent upon such service is used in another State, notwithstanding any recital contained there.

To quote from the opinion in Thompson v. Whitman, 18 Wal. 157 (Justice Bradley): "But if it is once conceded that "the validity of a judgment may be attacked collaterally by "evidence showing that the Court had no jurisdiction, it is not

"perceived how any allegation contained in the record itself, "however strongly made, can affect the right so to question it. "The very object of the evidence is to invalidate the paper as a "record. If that can be successfully done, no statements con- "tained therein have any force. If any such statements could "be used to prevent inquiry, a slight form of words might al- "ways be adopted so as effectually to nullify the right to such "inquiry. Recitals of this kind must be regarded like assevera- "tions of good faith in a deed, which avail nothing if the in- "strument is shown to be fraudulent."

The right to impeach the judgment of a Court of another State by bill in equity for fraud is expressly declared in Cole v. Cunningham, 133 U. S. 107.

Although fraud cannot be set up by plea or as a defense to an action on the judgment.

Christmas v. Russell, 72 U. S. 290.

II.

This Court cannot review the finding of the State Court on the question of fraud or lack of jurisdiction.

It is found as a fact in the opinion of the Vice Chancellor, on page 125 of the record, "that there was no bona fide domicile "in North Dakota and that the obtaining of a divorce on the "ground of domicile was a fraud on the Court"; and in the decree on page 126 of the record there is a similar finding recited.

The opinion of the Vice Chancellor was adopted in the Court of Errors and Appeals (the decree being affirmed on the opinion below). The findings of the Court of Chancery are thus made the findings of the Court of Errors and Appeals.

On error to a State Court this Court cannot reëxamine the evidence, and when the facts are found below is concluded by such finding.

Dower v. Richards, 151 U. S. 658.

And this is the rule where the record brought up is a decree in chancery as well as where it is a judgment at law.

Egan v. Hart, 165 U. S. 188.

The only permissible inquiry into the facts is to ascertain *whether there is any evidence to support the conclusion of the State Court.*

For that purpose and for that purpose only it is proposed to recapitulate the evidence touching the alleged residence of Streitwolf in North Dakota.

He had spent his entire married life, about twenty years, in New Brunswick, New Jersey, and claims to have voted there at the Presidential election in November, 1896.

November 16, 1896, his wife having left him and filed the original bill in this cause for divorce from bed and board, on the ground of cruelty, in August previous, he took up his residence he says in New York. In his answer he merely says that he engaged rooms there, which probably he considers equivalent to residence. It appears that he took his meals at Stroh's restaurant.

He had rented his house in New Brunswick, furnished, together with his liquor store.

January 1st, 1897, he went abroad and was absent until late in March following, when he returned to his boarding house in New York, where he remained until the 6th of May.

On that date he left (as he now says) for Mandan, North Dakota, but telling Stroh, the restaurant keeper, that he "expected to go to the Yellowstone Park with a party of gentlemen and from there take a trip to Europe." To others he simply told that he was going west. He told Hoggatt and Caruthers, afterward his attorneys in his divorce suit, that he was going to Mandan, but he made known to no one at that time that he intended to change his residence or go to Mandan to live.

On inquiring at his boarding house on the seventh day of May, his son (who was on friendly terms with him although living with complainant) was informed that he had gone to Chicago.

On the 19th of June he wrote to his son from Mammoth Hot Springs, Yellowstone Park, that he was "enjoying a lengthy trip through the Park," etc.

On the 20th of July he was back in New York and wrote his son to meet him.

About the 30th of July he again disappeared from New York as mysteriously as before, giving his son to understand that he was going to Europe to look after an estate recently left him by an aunt in Germany.

On August 14th his son received a letter from him mailed at Mandan August 11th, in which he seems to admit deception and concealment, or at all events strangeness in his conduct, and says "there is no more trouble about sending your letters direct here."

From this letter the son obtained his first information that his father had been at any time in Mandan, or North Dakota. Three days later (on August 17) the summons and complaint in the Dakota suit were served on Mrs. Streitwolf in Jersey City.

On August 19th (two days after service of these papers) answer was filed to the original bill.

Streitwolf says that he formed the determination to make his residence in North Dakota about the time that the negotiations with his wife for separate maintenance came to an end, which was the latter part of April. His counsel desired the Vice Chancellor to assume that the breaking off of these negotiations might have furnished a very powerful motive for his going to Mandan.

During the week last preceding his departure he said to his son, representing his wife, "You will not settle; you will suffer."

Before he went he had made the acquaintance of Hoggatt & Caruthers, who kept a standing advertisement over their name in the New York Herald, "Dakota Divorces—An absolute divorce may be obtained in North Dakota upon a residence of 90 days."

The purpose of obtaining a divorce in North Dakota had entered his mind before he went there. He knew that Hoggatt & Caruthers had an office in Mandan, as well as in New York.

He told them (and them only) that he was going to Mandan, and almost the first person he was introduced to by his traveling companion, on the very day he reached Mandan, was Voss, the Mandan correspondent of Hoggatt & Caruthers, and whose name appears with theirs as his attorneys in the North Dakota decree.

Prior to May, 1897, he had never been in North Dakota, had no friends there, had never corresponded with anyone there; yet he left New York with the determination he says not only of making his residence in North Dakota, but of making it at Mandan; bought his ticket in New York for Mandan and went directly there.

Asked what there was about Mandan that was so attractive to him he said: "In the first place the country generally is considered very healthy for people who suffer from nervousness; and in the second place I went down *for the purpose of getting my citizenship.*" And the reason he went to Mandan in preference to any other part of the State was because a chance acquaintance whom he first met a few days before he started, happened to be going there.

Thus were his steps directed to the very spot where the Dakota end of the Hoggatt & Caruthers divorce mill was in full and active operation. The divorce business was a "sort of fad" there, to use the expression of Voss, and every stranger presumptively a divorcee.

His first reason for going to North Dakota, its healthfulness, doesn't seem to have been sufficient to prevent his spending a very large part of the time of his alleged residence elsewhere; and within a very few days after he obtained his decree he went to Minneapolis and thence he went to New York and from there to Europe for his health. His health required him to go to Mandan, but no sooner had he got his decree than his health required him to leave. He only returned to this country in March following in consequence of the notice of this suit which he received in Austria. Three or four weeks later (after filing his answer) he returned to Mandan, doubtless advised that this was the only way by which he could hope to render his claim of residence in Mandan at all plausible. The bill charged that he returned to New York within a week after the

decree and had finally abandoned his pretense of residing in North Dakota immediately upon the accomplishment of the object which had induced him to assume it; and that he had never since (up to the filing of the bill in January, 1898) returned to said State. It was absolutely necessary that he should return to Mandan in order that the charge so made in the bill might not stand practically confessed. But evidence made by a party in his own favor after issue joined is of no weight. So also as to his ostentatious participation in politics and his pretense of going into business. These are the things that would naturally occur to him as the most obvious and notorious means of stimulating a residence.

The second reason for going to Mandan was "for the purpose of getting my citizenship."

In case of most persons changing their residence in good faith to another State, the change of domicile or citizenship is only incidental, but with Streitwolf it was the object and not the incident. For some reason it was desirable that he should have a citizenship there. Why was it? He does not explain, but the conclusion is irresistable that it was solely for the purpose of his suit for divorce, which he brought (November 9, 1897) the very next day after the expiration of the statutory period of ninety days from the time of his first setting foot in Mandan.

It surely cannot be said that in this evidence there is no support for the finding that Streitwolf had no *bona fide* domicil in North Dakota.

That he went there solely for the purpose of getting a divorce is too obvious for argument.

It would indeed be remarkable if this Court should find reason, not merely to disagree with the conclusion of fact reached by the learned Vice Chancellor and unanimously affirmed by the twelve Judges sitting in the Court of Errors and Appeals, but *to say that there is nothing in the evidence from which such a conclusion can be drawn.*

Evidence of a similar character but on the whole less convincing was held sufficient to sustain a verdict of guilty upon

an indictment involving a like issue in Commonwealth v. Kendall, 162 Mass. 221.

In Dickinson v. Dickinson, 167 Mass. 474, the Court said: "It has often been held by this Court that the fact that a man "abandons his wife and goes into another State and there ap- "plies for a divorce soon after he is able to do so warrants the "inference that he goes there for that purpose. Lyon v. Lyon, "2 Gray, 367; Chase v. Chase, 6 Gray, 157, 162. In Smith v. "Smith, 13 Gray, 209, the presumption arising from such a "fact is said by Chief Justice Shaw to be 'violent if not con- "'clusive.' See also Sewall v. Sewall, 122 Mass. 156."

The plaintiff must have had an actual domicil within the State where the action is brought for divorce.

The domicil must be complete and full in distinction to a quasi domicil. It must be adequate for any purpose.

2 Bishop Mar. Div. & Sep. Section 97.

This is the rule established in Lemesurier v. Lemesurier, 11 Reports (Privy Council) p. 517 (1895) after a full examination of the English cases.

There must be a fixed abode with an intention to remain at least for a time, for business or other reasons not solely connected with bringing suit for divorce.

1 Nelson Divorce and Separation, Section 41.

It has lately been held in the very State of North Dakota itself, that the courts of that State have no jurisdiction to grant a divorce to one who *"has no honest purpose of establishing a "domicile and cherishes the purpose of quitting the State as "soon as the divorce case is decided."*

Smith v. Smith (N. Dak.) 75 N. W. Reporter, 783.
2 Black Judgments, Section 929.
Cadwalader v. Howell, 3 Har. (N. J.) 138.
Winship v. Winship, 1 C. E. G. 107.

Coddington v. Coddington, 5 C. E. G. 163.
Firth v. Firth, 5 Dick. 137.
Fosdick v. Fosdick, 15 R. I.

The evidence of change of domicile must be free from suspicion and the statement of the party as to his intention is not sufficient unless some reasonable motive is disclosed unconnected with procuring a divorce.

1 Nelson Div. and Separation, Section 43.

III.

The North Dakota decree would not be within the protection of the Federal Constitution or statute even if the husband had been domiciled in good faith in that State.

The wife was never served with process in North Dakota (in fact was never in the State), nor did she appear in the cause. Service was made upon her in New Jersey. Her domicile continued to be in New Jersey, and was not affected by any change of the husband's domicile after they had separated.

A wife may acquire a separate domicile by her own act.

Cheever v. Wilson, 9 Wal. 108.

A fortiori may she simply retain the domicile which she has always had from childhood and through all the period of their cohabitation as against any act of removal by the husband after they had separated.

Moreover the legal presumption that the domicile of the husband is the domicile of the wife, is expressly excluded by a statute of North Dakota (pleaded in the answer to the supplemental bill), declaring that such presumption "does not apply "After separation each party may have a separate domicile de- "pending for proof upon actual residence and not upon legal "presumptions." (Record, p. 28.)

It is clear therefore that in the eye of the statute law of

North Dakota, as well as of the general law, Elizabeth Streitwolf was never domiciled in that State. The plaintiff's affidavit filed in his suit sets forth the undisputed fact that the wife was not a resident of North Dakota. (Record, p. 37.)

Granting then for the present that the husband's domicile was changed in 1897 to North Dakota, it being entirely clear that the wife's domicile continued to be in New Jersey, the question is neatly presented whether the Constitution or Statute of the United States requires that faith and credit be given by the Courts of New Jersey to a decree rendered by a court of North Dakota between parties so domiciled without appearance by the non-resident defendant and upon service of process made out of the jurisdiction of North Dakota.

It is not to be denied that this is a question upon which the courts of this country have differed irreconcilably, and which is hardly to be decided upon mere authority.

It is worthy of notice however, that the States which have held that such a judgment is not entitled to extraterritorial regard as of right on principles of international law include most of those to which the profession most frequently and confidently resorts for sound expositions of common law, and that this is also the doctrine of the English courts. The States so holding are New York, New Jersey, Pennsylvania, North Carolina South Carolina and Wisconsin. Massachusetts has not yet spoken, the cases in that State having rested on the legal fiction that the wife's domicile is necessarily the same as her husband's except where it appears affirmatively that she has left him for good cause. Burlew v. Shannon, 115 Mass.; Loker v. Gerald, 157 Mass. 42, 45; Burtis v. Burtis, 161 Mass. 508.)

And where as in the present case the offense charged against the wife occurred, if at all, when both parties were domiciled in another State, by the laws of which the offense was not a cause of absolute divorce, both Massachusetts and New Hampshire hold that the courts of a State to which the husband subsequently transfers his domicile cannot acquire jurisdiction to grant a divorce for such cause.

Lyon v. Lyon, 2 Gray, 367.
Greenlaw v. Greenlaw, 12 N. H. 200.
Foss v. Foss, 58 N. H. 283.

There has been no decision by this Court holding that decrees of divorce granted in a State where the complainant is domiciled but without regular service of process upon or appearance by defendant domiciled elsewhere, are within the provisions of the Federal Constitution and statute. Cheever v. Wilson, 9 Wal. 108, merely decides that a finding of residence is at least *prima facie* sufficient (there having been an appearance and defense on the merits). What was said in Pennoyer v. Neff, 95 U. S. 714, was intended merely to "prevent a misapplication of the views expressed," and to leave the question open as not then involved. The reference to divorce proceedings was wholly aside from the case in hand, and was at best a dictum. Moreover, the Court in that case was not considering the scope of the "full faith and credit" clause, but of the clause requiring "due process of law." A decree of divorce without strict service of process may be due process of law and so capable of recognition by comity (See Doughty v. Doughty, 1 Stewart, 581, 586), and yet not be entitled as of right to such recognition under the compulsion of the Constitution. It is a widely different thing to say that it may be recognized from saying that it must be. And indeed all that was said or intimated in Pennoyer v. Neff was that in such a case as this a judgment might perhaps be rendered *"which would be binding within the State,"* a proposition which we are not concerned to dispute.

The expressions in Cheely v. Clayton, 110 U. S. 701, refer only to cases where the domicile of the wife is either actually or constructively the same as that of the husband, and all that is there decided is that in order that the decree shall be valid even in the State where granted, where the service was only by publication, it must have been such as was required by the law of the State where the decree was granted.

The subject therefore is open to discussion and consideration in this Court upon principle; and I understand the inquiry

to be, *what faith and credit is such a judgment entitled to receive extraterritorially, upon general principles of international law?*

For if the judgment is of a nature to operate only in the jurisdiction where it was rendered it cannot be that the Constitution and Statute of the United States can apply so as to alter its essential character and make it operate elsewhere.

For instance, administration is only operative within the State where granted (Vaughan v. Northrup, 15 Peters, 1; Noonan v. Bradley, 9 Wal. 394), and it seems never to have been suggested that its operation is extended by the Constitution or Act of Congress now in question.

The case of Grover & Baker Sewing Machine Co. v. Radcliffe, 137 U. S. 287, clearly recognizes, and cites numerous cases to show, that a judgment valid in one State under its local laws, need not necessarily be recognized in other States.

It is well settled that in matters of divorce there is such a distinction to be drawn and that a decree may be operative in the territorial jurisdiction where it was pronounced without being entitled to any consideration whatever in another jurisdiction.

Said Lord Westbury in Shaw v. Gould, L. R. 3 H. L. 55, 81: "It is perfectly competent to the courts of Scotland to fix a "certain amount of residence as the condition for the exercise "of its jurisdiction, and if that condition be fulfilled it may pro- "ceed to pronounce a judgment that will be binding within its "own borders; but that judgment cannot claim extraterritorial "authority unless it be pronounced in accordance with rules of "international public law."

In Lemesurier v. Lemesurier, Appeal Cases (1895), 517, 527, Lord Watson, delivering the opinion of the Court, said:

"In order to sustain the competency of the present suit it is "necessary for the appellant to show that the jurisdiction as- "sumed by the district Judge of Matara was derived either "from some recognized principle of the general law of nations "or from some domestic rule of the Roman-Dutch law. If

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in actions
strictly penal
Wisconsin v.
Pelican Ins. Co.
127 U.S. 265;
Huntington v.
Attrill 146
U.S. 657.

"either of these points were established the jurisdiction of the "district court would be placed beyond question; but the effect "of its decree divorcing the spouses would not in each case be "the same. *When the jurisdiction of the court is exercised ac- "cording to the rules of international law, as in the case where "the parties have their domicile within its forum, its decree "dissolving their marriage ought to be respected by the tri- "bunals of every civilized country.* The opinions expressed by "the English Common Lay judges in Lolley's case gave rise to "a doubt whether that principle was in consistency with the "law of England which at that time did not allow a marriage "to be judicially dissolved. That doubt has since been dis- "pelled; and the law of England was in their Lordships' opin- "ion correctly stated by Lord Westbury in Shaw v. Gould, 3 "Eng & Ir. App. 55, 85, in these terms: 'The position that the " 'tribunal of a foreign country having jurisdiction to dissolve " 'the marriages of its own subjects is competent to pronounce " 'a similar decree between English subjects who were married " 'in England but who before and at the time of the suit are " 'permanently domiciled within the jurisdiction of such for- " 'eign tribunal, such decree being made in a *bona fide* suit " 'without collusion or concert, is a position consistent with " 'the resolution commonly cited as the resolution of the judges " 'in Lolley's case.' *On the other hand a decree of divorce* a " vinculo *pronounced by a court whose jurisdiction is solely* " *derived from some rule of municipal law peculiar to its fo-* " *rum, cannot when it trenches upon the interests of any other "country to whose tribunals the spouses are amenable, claim "extraterritorial authority."*

After an elaborate examination of all the English cases on the subject the opinion in Lemesuier v. Lemusier concludes (p. 540): "Their Lordships have in these circumstances and upon "these considerations come to the conclusion that according to "international law *the domicile for the time being of the mar- "ried pair* affords the only true test of jurisdiction to dissolve "their marriage. They concur without reservation in the "views expressed by Lord Penzance in Wilson v. Wilson, L. "R. 2, P. & D. 435, which were obviously intended to refer, "not to questions arising in regard to the mutual rights of mar-

"ried persons, but to jurisdiction in the matter of divorce. 'It
" 'is the strong inclination of my own opinion that the only fair
" 'and satisfactory rule to adopt on this matter of jurisdiction
" 'is to insist upon the parties in all cases referring their mat-
" 'rimonial differences to the courts of the country in which
" 'they are domiciled. Different communities have different
" 'views and laws respecting matrimonial obligations and a dif-
" 'ferent estimate of the causes which should justify divorce.
" 'It is both just and reasonable therefore that the differences
" 'of married people should be adjusted in accordance with the
" 'laws of the community to which they belong and dealt with
" 'by the tribunals which alone can administer those laws. An
" 'honest adherence to this principle moreover will preclude the
" 'scandal which arises when a man and woman are held to be
" 'man and wife in one country and strangers in another.' "

See also Dicey Conflict of Laws, p. 270.

Also per Brett L. J. in Niboyet v. Niboyet, 4 P. & D. 1, 13, 14.

Where both parties have the same domicile no doubt the sovereignty, which has thus the sole and entire control of the status between them, may dissolve it, and such action should everywhere be regarded as conclusive.

It is not essential except as made so by the State constitutions, that divorce should be by judicial proceeding.

It is familiar that until within comparatively recent times divorces were always by the legislature.

Such divorces were valid at common law even without notice of any kind to the parties.

Maynard v. Hill, 125 U. S. 190.

Whether the proceeding is legislative or judicial, it is (on principles of international law) everywhere recognized as the declaration of the only sovereignty having any right to control the status of the parties; and this because they are its citizens.

It is the authoritative and conclusive determination of their relation to each other and to society, by the sovereignty to the

laws of which they have chosen to submit the regulation of their home.

But when the parties have diverse domiciles the aspect of the matter is entirely different.

Each State in which one of the parties is domiciled is interested in and has the right to regulate, control and dissolve the *status* of each of its citizens for its own local and domestic purposes; but neither State in virtue of any control of the *status* of its own citizen can affect the *status* of one not its citizen except for its local and domestic purposes and within its own territory.

The claim of either State to determine the *status* under such conditions cannot be asserted in terms which do not imply an equal right in the other State.

The right of the State of North Dakota to declare these parties divorced is no greater than the right of the State of New Jersey to declare them still married.

Any effort to apply in New Jersey the declaration of the sovereignty of North Dakota that they are no longer man and wife must fail because it conflicts with the right of the sovereignty of New Jersey to declare for its local purposes that they continue to be man and wife.

So axiomatic are these principles that it is not believed that they would be disputed by any one in case of a divorce by act of the legislature.

Maynard v. Hill, 125 U. S. 190, it is true involved the validity of a legislative divorce granted by the Territory of Oregon in which the husband was domiciled but not the wife. This Court held "that the granting of divorces was a rightful subject of legislation according to the prevailing judicial opinion of the country at the time when the organic Act of Oregon was passed by Congress, when either of the parties divorced was at the time a resident within the territorial jurisdiction of the legislature," and the husband being a resident within the territory, if the legislature possessed the power to grant a divorce in any case, its jurisdiction to legislate upon his *status* was undoubted.

But that case arose in Washington Territory and involved the title to lands in that part of Washington Territory which

was formerly part of the Territory of Oregon. The question was therefore in substance as to the effect of such a divorce in the State or Territory where it was granted and where the husband was domiciled. If the land in controversy had been in the State of the wife's domicile I apprehend the decision would have been otherwise. Clearly the courts of the State of her domicile were on no principle of international law required to consider her *status* as fixed by the legislation of another State to the jurisdiction of which she was never subject.

But, the supporters of such a decree will say, that this was a judicial proceeding, and therefore by force of the Constitution and Statute of the United States entitled to faith and credit as such as well in New Jersey as in North Dakota. And then confronted with the repeated decisions of this Court that judgments *in personam* rendered without appearance and without service of process within the territorial jurisdiction are entirely void, they return to the theory of *status* as a ground for sustaining the decree, urging that because it "affects" the *status* it is a proceeding *quasi in rem.*

But as a proceeding *quasi in rem* it is no better than if it were a legislative divorce.

Its irremedial defect is *the want of complete and exclusive control of the status—the res.*

Whether the power of the State of North Dakota shall be exerted through its legislature or its judiciary is a matter of concern only to itself; it is no greater in one case than the other, and in either case it cannot be more extensive than the control of the subject matter, unless the defendant appears or is subjected to the jurisdiction by service of process as in a cause *in personam.*

The analogy to a proceeding *in rem* fails at this vital point.

Complete and exclusive possession of the *res* is of the essence of the jurisdiction *in rem.*

It is not enough that the divorce proceeding affects the status; it must emanate from an authority which can control it; otherwise its effect must be merely local.

The *res* in divorce proceedings is the marriage relation; the *status is the joint status of two persons, not of one.*

As a proceeding *in rem* or *quasi in rem* it must deal with the *res* as an entirety, not with regard to the right of one party only.

There cannot be a husband without a wife or a wife without a husband. That which dissolves the marriage tie as to one dissolves it as to the other. Each is interested in the *status* in precisely the same way; the rights of neither party are incidental to those of the other; the rights of each are primary and of equal importance.

But each party takes the joint *status* with him or her into the country of his or her domicile, and by his or her citizenship subjects it to the laws of that country.

Hence where the parties are domiciled in different States there can be no proceeding analogous to a proceeding in rem in either State.

This results not from any technical or arbitrary view of the subject, but from the very nature of the thing, neither State having a right to control or dispose of the *res* to the prejudice or exclusion of an equal right in the other.

Since it must be admitted that each State before the divorce had the right to fix and regulate from time to time the *status* of its own citizen within its own jurisdiction, how is it possible that the mere exercise of this right by one State can wholly deprive the other State of its right (unless where by reason of the defendant having been subjected to the jurisdiction by due service of process or by voluntary appearance, there are present the essentials of a decree *in personam*)?

It is said that the non-resident spouse loses his or her partner as the necessary result of a divorce granted to the latter in the State of his or her domicile. This is satisfactory if such effect is confined to the territorial jurisdiction in which the divorce is granted; but entirely unsatisfactory if it is extended further.

If it is said that unless the divorce is recognized extraterritorially the parties will be regarded as divorced in one jurisdiction and as still man and wife in another, that is for the consideration of the State which assumes to grant a divorce under such conditions, but is no reason why such a divorce

should have more than its legitimate effect, or why the State of the domicile of the other party should by such usurpation be deprived of any of its just powers or should neglect the duty which it owes to its own citizen of protection against such a wrong.

If it were true that a person cannot be divorced in one State and still married in another it would be a ground for holding that neither State could grant a divorce without service of process within its territory, but certainly no reason for holding a divorce granted without such service to be binding everywhere.

To restate what I conceive to be the true doctrine on this subject, I submit the following propositions:

(1) Domicile of one party in the State is necessary and is sufficient to enable a court of that State to take jurisdiction in divorce.

(2) If process in such a case be served within the State or the defendant appear the judgment that follows is as a judgment *in personam*, entitled to full fait hand credit in every other State.

(3) If process in such a case be not served within the State and the defendant does not appear the court may enter a judgment which will fix the *status* within the State only.

(4) If both parties have their domicile within the State, the authorities of that State have complete and exclusive control of the *status* and can grant a divorce which will be valid everywhere.

In accordance with the views above expressed it was held in Doughty v. Doughty, 1 Stewart (N. J.) 581, that a decree of divorce obtained without appearance by defendant and upon service made beyond the territorial jurisdiction "is not entitled "to recognition and enforcement in other States by force of the "Act of Congress and the Constitution of the United States," and that "it is only judgments that ensue from jurisdiction "regularly obtained over the parties by service of process upon "them or by voluntary appearance or when the proceeding is

'strictly *in rem* that carry with them these high sanctions, and "therefore are everywhere conclusive. *Jurisdiction in divorce "suits arising out of the status and domicile of one of the par-"ties cannot impart to a judgment any such efficiency."*

To the same effect are State v. Baker, 76 N. Y. 78; Jones v. Jones, 108 N. Y. 415; De Meli v. De Meli, 120 N. Y. 485; Matter of Kimball, 155 N. Y. 62; Colvin v. Reed, 55 Pa. St. 375; Reel v. Elder, 62 Pa. St. 308; Fyocks Estate, 135 Pa. St. 522; Irby v. Wilson, 1 Dev. & B. Eq. 568; Harris v. Harris, 155 N. Car. 587; McCreery v. Davis, 44 S. Car. 195; Cook v. Cook, 56 Wis. 195.

In England cases of divorce between parties having diverse domiciles have been rare owing to the tenacity with which English courts have held to the rule that the wife's domicile must follow that of her husband.

In Le Sueur v. Le Sueur, L. R. 1 Prob. Div. 139 (1876), however, Sir R. J. Phillimore was disposed to assume (though as he admitted going a step beyond previous authorities) that the wife had acquired a separate domicile in England, the husband having deserted her and gone to the United States, where citation was served upon him, but denied the divorce on the express and only ground that the husband not being domiciled in England was not subject to the jurisdiction.

If it should be urged that the decree of the Court of Chancery goes too far and denies to the plaintiff in error the benefit of his decree even within the State of North Dakota, the answer is that that is not a Federal question.

If the judgment or decree of the North Dakota Court is not entitled to full faith and credit everywhere by force of the Federal Constitution and Statute, then it is not one to which this Court can extend any aid whatever.

The jurisdiction of this Court on the present occasion is limited to considering whether the New Jersey Courts have acted contrary to the Constitution and Statute of the United States.

IV.

The North Dakota decree is void, because there is no statute of that State either pleaded or proved authorizing service of summons beyond the State.

It has never been alleged in the case from beginning to end that any such statute exists.

The only statutes of North Dakota anywhere referred to are those pleaded in the answer (Record, pages 28-29). These were the only ones offered in evidence (page 98).

This Court on error to the highest court of a State does not judicially notice the laws of other States.

Hanley v. Donohue, 116 U. S. 1.
Renaud v. Abbott, 116 U. S. 277.
Lloyd v. Matthews, 155 U. S. 222.

In Cheely v. Clayton, 110 U. S. 701, referring to a decree granted against a non-resident upon substituted service, the Court said: "But in order to make the divorce valid either in "the State in which it is granted or in another State, there "must, unless the defendant appeared in the suit, have been "such notice to her as the law of the first State required."

Where as in this case the record shows that the defendant was without the territorial limits of the State and that he never appeared in the action, presumption of jurisdiction over his person ceases, and the burthen is cast upon the party claiming under the decree to show that jurisdiction was acquired.

Galpin v. Page, 18 Wal. 350.
Kelley v. Kelley, 161 Mass. 111.

Nor does the finding that the service of summons and complaint out of the State was "as required by the laws of this State," or again, "as required by laws," supply the defect.

The statute must be set forth.

Holmes v. Broughton, 10 Wend. 75.
Kelley v. Kelley, 161 Mass. 111.
Salt Lake City Bank v. Hendrickson, 11 Vr. 52, 55.
Boehme v. Rall, 6 Dickinson (N. J.) 541, 545, 546.

It is therefore respectfully submitted that upon all the grounds above stated the decree of the Court of Errors and Appeals of the State of New Jersey should be in all things affirmed with costs.

ALAN H. STRONG,
Of Counsel with Defendant in Error.

Supreme Court of the United States.

No. 109.—October Term, 1900.

August Streitwolf, Plaintiff in Error, *vs.* Elizabeth Streitwolf. } In error to the Court of Errors and Appeals of the State of New Jersey.

August Streitwolf and Elizabeth Streitwolf were married at New Brunswick in New Jersey on June 3, 1877, and lived there as husband and wife until August 3, 1896. On August 17, 1896, the wife filed against the husband in the Court of Chancery in the State of New Jersey a bill for divorce for his extreme cruelty, and for alimony; a subpœna returnable August 29, 1896, was served upon the husband personally in New Jersey; and in November, 1896, after a hearing, an order was made for the payment of alimony *pendente lite*.

On August 9, 1897, the husband filed against the wife in the district court of the Sixth Judicial District of the State of North Dakota a suit for a divorce from the bond of matrimony for her extreme cruelty and habitual intemperance; and caused to be personally served on her in New Jersey on August 17, 1897, a copy of the summons and complaint therein, directing her to answer within thirty days after service of the summons upon her, or be defaulted.

On August 19, 1897, the husband filed in the suit in New Jersey an answer denying the allegations of the wife's bill, but saying nothing of the suit in North Dakota.

On September 7, 1897, the wife filed in the suit in New Jersey a petition, supported by affidavits, for an injunction against the suit in North Dakota, denying the husband's allegations in that suit, alleging that the domicil of both parties was still in New Jersey, and that his pretended residence in North Dakota was wholly fictitious and fraudulent, and intended only to give a colorable jurisdiction to the court of North Dakota for the purpose of the suit therein; and further alleging that the wife had not in anywise appeared in that suit, and that a decree against her in that suit would be a bar to her suit in New Jersey, and that the practical effect, and doubtless the object of the proceeding, would be to withdraw the adjudication and settlement of her marital rights from the court of New Jersey and transfer the same to the court of North Dakota. On September 8, 1897, a temporary injunction was issued accordingly, to continue until the husband should have fully answered the bill and until the further order of the court.

On October 7, 1897, the husband submitted to the judge of the court in North Dakota his own *ex parte* deposition, and the *ex parte* depositions of other witnesses taken in the city of New York on October 4, 1897; and obtained from that court a decree of divorce from the bond of matrimony for his wife's cruelty and habitual intemperance, which recited that "the plaintiff now is and for more than ninety days prior to the commencement of this action has been in good faith a resident of the State of North Dakota," and that "the court has full power and jurisdiction, both of the subject matter of the action, and the parties plaintiff and defendant therein."

On January 11, 1898, the wife filed against the husband in the Court of Chancery of New Jersey a supplemental bill, repeating the allegations of her petition for an injunction, and alleging the granting of the injunction, and its service upon the husband's counsel in New Jersey and in North Dakota on the 13th and 15th of September, 1897, and that the decree in North Dakota was void for want of jurisdiction of the subject matter and of the wife as a party, and was procured by fraud and in contempt of the Court of Chancery of New Jersey.

In April, 1898, the husband filed an answer to the supplemental bill, alleging that at and for more than ninety days preceding the commencement of his suit in North Dakota, he was a resident and citizen and domiciled in good faith in that State; setting forth §§ 2737, 2742, 2743, 2755–2757 of the Civil Code of North Dakota of 1895; and insisting that the decree in North Dakota was a valid judgment, rendered with full jurisdiction over the subject matter and the parties, and was entitled to full faith and credit under the Constitution and laws of the United States.

The wife filed a general replication to the answer. The evidence tended to show, and the Court of Chancery of New Jersey found, the following facts:

In November, 1896, the husband sold out his business in New Brunswick, rented the building and furniture to the grantee of the business, and went to New York and boarded there for a while, and then went to Europe on a pleasure tour, and returned to New York in the following March, and remained there until May 5, 1897. In April, 1897, negotiations were going on between him and his wife for a settlement of their difficulties, which entirely failed before the 1st of May. About that time he became acquainted with a firm of lawyers, Hoggatt & Caruthers, who had an office in New York, and were attorneys engaged in the business of procuring divorces; and he talked with them, and found that they had an office and a representative in Mandan, North Dakota. Streitwolf had never been in Mandan, knew nobody there, and had no connections, directly or indirectly, with Mandan, or with anybody in North Dakota. On May 6, 1897, without informing anybody where he was going, or that he intended to change his residence, he left New York and went to Mandan;

arrived there on Sunday morning, May 9, and in the afternoon of the same day was introduced by a travelling companion to one Voss, who represented Hoggatt & Caruthers in Mandan. He took board at a boarding-house, stayed there a few weeks, and then went to the Yellowstone Park. He wrote to nobody that he was at Mandan, dated no letters there, and gave no notice to anybody of his residence there. But while in the Yellowstone Park he wrote to his son that he was taking a trip through that country. In July he came back to New York, and was there a week or more; and sought and obtained an interview with his son, who was then living with his mother in Jersey City and working in New York city; and in that interview stated that he was going to Germany to get a legacy that had been left to him, and invited his son to go with him, and his son promised to give him an answer on the evening of July 30. The son went to the rendezvous on that evening, and his father was not there. About that time Streitwolf went to Mandan, and neither his son nor any other person, as far as appears, had the slightest idea that he had been away from home with a view to changing his residence, or adopting a new home. He arrived at Mandan in August, and on August 9, three days from his arrival, commenced his suit against his wife for divorce, and took measures to have the papers served upon her in New Jersey.

The court held that the husband had no *bona fide* domicil in North Dakota, that the judgment there was obtained by fraud and imposition on the court, and that the court there had no jurisdiction; and issued a perpetual injunction against setting up that judgment.

The decree was affirmed by the Court of Errors and Appeals of the State of New Jersey. 13 Dickinson (58 N. J. Eq.) 563. The husband sued out this writ of error.

[April 15, 1901.]

Mr. Justice GRAY, after stating the case as above, delivered the opinion of the Court.

This case must follow *Bell* v. *Bell*, *ante*. The law of North Dakota requires a domicil in good faith of the libellant for ninety days as a prerequisite to jurisdiction of a case of divorce. *Smith* v. *Smith*, 7 North Dakota, 404, 413. The facts in evidence warranted, and indeed required, the finding that the husband had no *bona fide* domicil in the State of North Dakota, when he obtained a divorce there, and it is not pretended that the wife had an independent domicil in North Dakota, or was ever in that State. The court of that State, therefore, had no jurisdiction.

Judgment affirmed.